Barberton Ohio

OHIO STATE BAR ASSOCIATION.

REPORTS, VOLUME XIX.

PROCEEDINGS

OF THE

ANNUAL MEETING OF THE ASSOCIATION,

HELD AT

PUT-IN-BAY,

JULY 12, 13, 14 and 15, 1898.

CONSTITUTION, BY-LAWS, LIST OF OFFICERS, MEMBERS, ETC.

NORWALK, OHIO:
THE LANING PRINTING COMPANY.
1898.

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The Ohio State Bar Association.

CONSTITUTION.

I. NAME.

This Association shall be known as "The Ohio State Bar Association."

II. OBJECT.

The Association is formed to advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to uphold integrity, honor and courtesy in the legal profession; to encourage thorough liberal legal education, and to cultivate cordial intercourse among the members of the bar.

III. MEMBERSHIP.

The members of the bar attending this Convention as delegates this eighth day of July, 1880, are hereby declared to be members of this Association, provided they shall, during the present session, pay the admission fee and sign the Constitution. Any member of the bar, of good standing, residing or practicing in the State of Ohio, may become a member of the Association upon the nomination and vote, as hereinafter provided.

IV. ELECTION OF MEMBERS.

All nominations for membership shall be made by the Committee on Admissions, and must be transmitted in writing to the President and by him reported to the Association, and if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot. Several nominees may be voted upon on the same ballot, and in such a case the placing of the word "no" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. One negative vote in every five shall suffice to defeat an election. No member of the bar residing in a county where there is a local bar association, shall become a member of this Association unless he shall also be a member of such local association.

V. OFFICERS.

The officers of the Association shall be a President, who shall deliver the annual address, and be ineligible for a second term; one Vice-President for each judicial district reported by membership in the Association; a Secretary and Treasurer. All of these shall be elected at the annual meeting, and hold their offices until the next annual meeting of the Association, and until their successors are elected.

VI. COMMITTEES.

The President shall, with the approval of the Association, appoint the following Standing Committees: An Executive Committee, a Committee on Admissions, a Committee on Judicial Administration and Legal Reform, a Committee on Legal Education, a Committee on Grievances, and a Committee on Legal Biography.

And each Standing Committee shall be composed of one member from every judicial district represented in the Association. A majority of the members of every committee who may be present at a meeting of the Association shall constitute a quorum of such committee for the purposes of such meeting.

Every committee shall, at each annual meeting, report in writing a summary of its proceedings since the last annual report, together with any suggestions deemed suitable and appertaining to its powers, duties, or business. A general summary of all such annual reports and of the proceedings of the annual meetings shall be prepared and printed by and under the direction of the Executive Committee, together with the Constitution, By-Laws, names, and residences of Officers, Standing Committees, and members of the Association, as soon as practicable after each annual meeting.

VII. FINAL ACTION.

No action of the Association of a permanent nature, or recommending changes in the law or the administration of justice, shall be final until approved by the Standing Committee to which the same shall be referred by the Association.

VIII. PRESIDENT.

The President, or, in his absence, the senior Vice-President, shall preside at all meetings of the Association, and the President shall deliver an address at the opening of the meeting next after his election.

IX. EXECUTIVE COMMITTEE.

The President and Secretary shall be ex-officio members of the Executive Committee. The Committee

shall manage the affairs of the Association, subject to the provisions of the Constitution and By-Laws, and shall be vested with the title to all its property as trustees thereof, and shall make By-Laws, for the Association, subject to amendment by the Association.

X. COMMITTEE ON ADMISSIONS.

The proceedings of this Committee shall be deemed confidential, and shall be kept secret, except so far as written or printed reports of the Committee shall be necessarily and officially made to the Association.

XI. COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL REFORM.

It shall be the duty of the Committee on Judicial Administration and Legal Reform to take record of all proposed changes of the law, and to recommend such as may be, in its opinion, entitled to the favorable influence of the Association; and, further, to observe the working of the judicial system of the State, to collect information with reference thereto, and to recommend such action as it may deem advisable.

XII. COMMITTEE ON LEGAL EDUCATION.

It shall be the duty of the Committee on Legal Education to examine and to report what change it is expected to propose in the system of legal education and of admission to the practice of the profession in the State of Ohio.

XIII. COMMITTEE ON GRIEVANCES.

The Committee on Grievances shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law

and the administration of justice, and report the same to the Association, with such recommendations as it may deem advisable.

The proceedings of this Committee shall be deemed confidential and kept secret, except so far as reports of the same shall be necessarily and officially made to the Association.

XIV. COMMITTEE ON LEGAL BIOGRAPHY.

The Committee on Legal Biography shall provide for the preservation among the archives of the Association of suitable written or printed memorials of the lives and characters of deceased members of the Ohio Bar, and procure and report to the next annual meeting a short biographical sketch of each member whose death shall have been reported at any annual meeting. [Amended December 28, 1886.]

SECRETARY.

The Secretary shall keep a record of the proceedings, and conduct the correspondence of the Association, and perform the usual duties of such office.

TREASURER.

The Treasurer shall collect and by order of the Executive Committee disburse all funds of the Association, and keep regular accounts, which at all times shall be open to the inspection of any member or members of the Executive Committee.

ANNUAL MEETING.

The Association shall meet annually at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

DUES.

The admission fee will, in all cases, be $2. The annual dues of the members shall be $2, to be paid yearly on or before the first day of the annual meeting of the Association, and after each annual meeting the Treasurer shall notify each member in arrears for dues of the amount due; and any member who shall remain in default for dues until the close of the annual meeting next following such default, shall be suspended and dropped from the rolls, and shall not be reinstated until all back dues are paid; provided, however, that in case such back dues amount to more than $5, such members may, upon recommendation of the Committee on Admissions, be reinstated on payment of the sum of $5. [Amended December 28, 1886, and July 15, 1892.]

AMENDMENTS.

This Constitution may be altered or amended by a vote of a majority of the members present at any annual meeting, with the approval of the Executive Committee.

BY-LAWS.

The following By-Laws prepared by the Sub-Committee appointed for that purpose were adopted in the month of September, 1881, by the following indorsement written thereon:

APPROVED.

The undersigned members of the Executive Committee hereby consent that a meeting of the Committee to consider the within By-Laws be dispensed with, and that said By-Laws be considered as adopted and be published by the Secretary with his report.

RUFUS KING.
JOHN W. HERRON.
J. T. HOLMES.
L. J. CRITCHFIELD.
GEO. W. HOUK.
JOHN F. BROTHERTON.
WARREN P. NOBLE.
GEO. W. GEDDES.
CHAS. H. GROSVENOR.
D. A. HOLLINGSWORTH.
WM. H. UPSON.

I. The Executive Committee, at its first meeting after each annual meeting of the Association, shall select some person to make an address at the next annual meeting, on the life and services of any deceased member of the bench or bar of Ohio, of eminence, or other subject; and also not exceeding five members of the Association to read papers.

II. The Order of Exercises at the annual meeting shall be as follows:

(a) Annual Address of the President.

(b) Report of Committee on Admission and Election of Members.

(c) Report of Secretary.

(d) Report of Treasurer.

(e) Reports of Standing Committees:

Executive Committee.

On Judicial Administration and Legal Reform.

On Legal Education.

On Grievances.

On Legal Biography.

(f) President's call upon each Judicial District for names of deceased members.

(g) Reports of Special Committees.

(h) The Nomination of Officers.

(i) The Appointment of Standing Committees.

(j) Miscellaneous Business.

(k) The Election of Officers.

The address to be delivered by a person invited by the Executive Committee shall be at the morning session of the second day of the annual meeting, and the reading of papers by the members appointed by the Executive Committee on the same day, unless the Executive Committee shall designate some other time for the address and reading of papers. After the reading of each paper an opportunity shall be given for discussion on the topic of the paper.

The Executive Committee shall publish some days in advance of each annual meeting, a statement of the person who is to deliver the address, and the persons who are to read papers, and the subject of each. [Amended December 28, 1886.]

III. No person taking part in a discussion shall speak more than ten minutes at a time, or more than

twice on one subject. A stenographer shall be employed at each annual meeting.

IV. At any of the meetings of the Association, members of the bar of any foreign country or of any state other than Ohio, who are not members of the Association, may be admitted to the privileges of the floor during such meetings.

V. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the Committees, and all proceedings at the annual meeing shall be printed; but no other address made or paper read or presented shall be printed, except by the order of the Executive Committee. Extra copies of reports, addresses, and papers read before the Association, may be printed for the use of their authors, not exceeding one hundred copies to each of such authors.

The Executive Committee, as a Committee on Publication, shall meet within one month after each annual meeting, at such time and place as the Chairman shall appoint.

VI. The terms of office of all officers at any annual meeting shall commence at the adjournment of such meeting; but the terms of office of the members of the several committees appointed by the President shall commence immediately on their appointment.

VII. Each committee shall elect its own officers, whose terms of office shall commence on their election and continue until the appointment of a new committee. And each Standing Committee shall continue until its successor shall be appointed.

VIII. All Standing Committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as the respective chairmen may designate.

IX. Special meetings of any committee shall be held at such times and places as the chairmen thereof may appoint. Reasonable notice shall be given by him to each member by mail.

X. The Treasurer's report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

MEMORANDA.

All judges and ex-judges of the Supreme Court of Ohio are ex-officio members of this Association. I. Rep., 17.

All judges and ex-judges of the United States Courts, who are members of the Ohio Bar, are ex-officio members of this Asscoiation. VI. Rep., 157.

At each annual meeting of the Association a committee consisting of three members, to be styled the Committee on Railroads and Transportation, shall be appointed by the President of the Association, whose duty it shall be, at least six weeks prior to the next ensuing annual meeting, to negotiate and complete all practicable arrangements for reduced rates of travel to those attending, and through its Chairman, at least four weeks before the annual meeting, advise the Chairman of the Executive Committee and Secretary of the Association of arrangements made, so that the same may be printed in the notices and programmes sent out to members in advance of the meeting. [Adopted from Secretary's Report, July 18, 1889, 10 Rep., 121.]

Resolved, That all applications for membership shall be accompanied with the membership fee, and upon default so to do, such application shall be returned without delay to such applicant by the Secretary of the Association or Committee on Admissions. [Adopted by the Association, July 18, 1890, 11 Rep., 124.]

The Nineteenth Annual Session

OF

The Ohio State Bar Association,

HELD AT THE

Hotel Victory, Put-in-Bay, Ohio.

Put-in-Bay, Ohio, July 12, 1898.

The Nineteenth Annual Session of the Ohio State Bar Association was called to order at the Hotel Victory, on this Island, at 2:30 P. M., by the Chairman of the Executive Committee, Hon. R. D. Marshall, of Dayton.

Mr. Marshall: Gentlemen of the Ohio State Bar Association: The time has arrived at which it is proper to call this convention to order. As Chairman of the Executive Committee, that is my duty; and allow me to congratulate you that so many of you have seen fit and have been permitted to come together on this occasion, on such an excellent day, and under such circumstances as we meet today.

The Executive Committee, in their attempt to get up a program, after no little exertion, felt rather proud of the program, and felt assured that it would be carried out in the order in which it is printed. But things have occurred which could not be foreseen or prevented. As you are all probably aware, ex-Secretary Carlisle had consented to come here and address us, and as the Association had been disappointed on two or more occasions, the Executive Committee, and the President also,

was very anxious that there should be no disappointment this time; and, while we had to do it diplomatically, we had each man understand that, in accepting the invitation to address the Association, it would be expected that he would be here; and, had all the ordinary expectations been fulfilled, no doubt they would all have been here. We have to regret that ex-Secretary Carlisle's only surviving child died a week ago today. This prevents him from being with us, as he was very anxious to do, and had so expressed himself in writing and personally to the President of the Association. Judge Owen was also expected to be here, and would be here except for that which he cannot avoid. We received a letter from his wife a few days ago stating his condition, and that he is unable to give any attention to anything, or consider anything; that he was weak and depressed. I know you will all be sorry to learn this fact, and we all hope that at a very early day he may rally from his illness and be fully restored to health.

Yet, we are not without hope. In fact, I am in favor of being an optimist instead of being a pessimist, for "the darkest day will pass away, and the sun will shine tomorrow." We expect to have a meeting here that will be agreeable, instructive and also entertaining. That is what we are after. The people of this world like to be amused and entertained, and it is right that they should be; and we have endeavored to arrange that matter, and I have no doubt that at the close of this convention, while we feel that we have been disappointed in some particulars, yet, in others, we will have reason to rejoice in what we have seen and heard.

There is one thing to which I wish to call your attention. We had arranged to have a banquet. We had appointed a committee and correspondence had been had with the proprietor of this hotel, and all things, we

thought, agreed upon. We proposed to make it practicable. We didn't propose to go into the banquet hall at a time when we are all accustomed to go to bed. We wanted to commence in time, and wanted to get through in time. An old bishop of the Methodist Church said there were three things required of the preacher. He was to have something to say; the other was, to say it; and last, but not least, was to stop when he got through. We wanted to do something, do it, and to stop when we got through. There are some persons who, owing to the smell of the coffee and the taste of the water on the lakes, tends to make them dizzy, and they want to go to bed early. The manager of the hotel seems to differ from the proprietor. He wants us to go in at half-past nine. He wants to make terms with us that we shall fix the number, then pay for that number whether they are there or not, and if any more come, they shall be shut out. While we recognize the old idea of those who keep their lamps trimmed and are ready when the bridegroom comes, and that that is all proper, yet we feel like Noah, when he built the ark, he did not shut the door until all had an opportunity to come in; and we do not feel like shutting the door against any brother, or any sister either, and especially not against the sister, for they are all to come in; and therefore we are not willing to accept his terms, and we shall want an expression of opinion from you on the subject, as to whether we shall have the banquet, and accept the terms indicated by the manager or not.

Now, I feel that there ought to have been some arrangement made, and the proprietor and manager should have understood it alike, so that the Association should have understood it; but the Executive Committee feel this way about it: That while we want to do what is just and right in reference to the matter, and

that which is equitable, we do not want to be too much dictated to. We are willing that the man should know in reference to the number, or about the number, and then we will give, say ten or twelve hours' notice as to others who want to come in; and if they want to come in, we want them, because we are not going to shut out any of our brethren. We like them all too well.

I speak of this so that you may give an expression of your views in reference to it sometime during the day, that we may inform the manager of the hotel.

The first thing in order on the program will be the Annual Address of the President, and I now have the pleasure and honor of introducing to you Hon. Judson Harmon, your President, who will address you. (Applause.)

The President assumed the chair, and delivered an address, for which see Appendix I.

Mr. J. A. Kohler, Akron: I am sure the admirable and instructive address to which we have just listened has largely lightened the disappointment we felt in the announcement made by Mr. Marshall concerning the illness of Judge Owen, and the sad bereavement of ex-Secretary John G. Carlisle. One of the great inducements I had, and I presume others had in attending this meeting was to hear that great statesman, and eminent lawyer, and our own excellent Justice, Selwyn N. Owen. If it is in order, I would move that the officers of this Association send a telegram to Judge Owen, expressing our regret at his inability to be present, and the hope that he may soon be restored to health, and our profound sympathy with John G. Carlisle in his sad bereavement.

Seconded and carried.

The President: If you will kindly prepare the dispatch, the officers will have it sent.

The following telegrams were sent:

"Put-in-Bay, July 13, 1898.

"Hon. Selwyn N. Owen,
Bay View, Mich.

"The Bar Association of Ohio, deeply regretting your absence and its cause, beg to express their hope that you will soon be well again.

(Signed) Judson Harmon,
President."

"Put-in-Bay, July 13, 1898.

"Hon. John G. Carlisle,
New York City.

"The Bar Association of Ohio, deeply regretting your absence and its cause, beg to express their profound sympathy in your affliction.

(Signed) Judson Harmon,
President."

The President: The next in order is the report of the Committee on Admissions and Elections.

The report was read by Mr. Mykrantz, and was as follows:

REPORT OF COMMITTEE ON ADMISSIONS AND ELECTIONS.

To the Ohio State Bar Association:

Mr. President and Gentlemen: Your Committee on Admissions and Elections submit the following report:

Your Committee, after careful investigation, recommend the election of the following named lawyers as members of this Association:

Isaac Johnson, Wooster, O.

John W. Barry, Mt. Gilead.
William T. McClure, Columbus.
Robert Carey, Upper Sandusky.
Herbert L. Brice, Lima.
David J. Workum, Cincinnati.
Gideon Wilson, Cincinnati.
E. P. Otis, Akron.
Amos Boehmer, Ottawa.
Rob't T. Bartlett, Mt. Gilead.
Oscar Stoehr, Cincinnati.
Charles T. Greve, Cincinnati.
Edward J. Dempsey, Cincinnati.
Wm. Littleford, Cincinnati.
Frederick G. Roelker, Cincinnati.
Charles L. Flory, Newark.
Daniel J. Ryan, Columbus.
Jesse Stephens, Fostoria.
W. C. Boyle, Salem.
F. J. Mullins, Salem.
L. F. Limbert, Dayton.
James H. Anderson, Columbus.
Edwin P. Matthews, Dayton.
Frederick N. Sinks, Columbus.
H. B. Chapman, Cleveland.
Daniel H. Sowers, Columbus.
E. G. Johnson, Elyria.
Frederick B. Williard, Toledo.
Charles S. Northrup, Toledo.
Eldred L. Twing, Toledo.
Julius L. Anderson, Ironton.
Wm. H. Gilbert, Troy.
H. L. Smith, Cleveland.
James J. Clark, Canton.
Henry W. Harter, Canton.
Ben W. Johnson, Elyria.

Your Committee recommend the reinstatement of the following named members:

Judge John David Jones, Newark.

Judge W. S. Wagner, Tiffin.

Respectfully submitted,

H. A. Mykrantz,
Chairman.

Mr. Pike, Toledo: I move that the report be adopted, and that the Secretary be directed to cast the vote of the Association in favor of the gentlemen to be elected and reinstated.

The motion was seconded, and was carried. The Secretary cast the ballot of the Association for the gentlemen named, and they were declared to have been duly elected and reinstated to membership.

The President: The next business in order is the report of the Secretary.

H. B. Arnold, Columbus: Upon the program appears the statement that the Secretary will make a report, but there is no provision in the Constitution of this Association to that effect. His duties cover the preparation of the record, carrying on the correspondence of the Association, and the usual duties pertaining to that office. The preparation of the record includes issuing the annual printed report, which you all receive, and, of course, all the details in conducting the correspondence and all the other matters in the internal affairs of the Association are purely routine. A question was made a year ago as to the Secretary making any report, or making any suggestions as to matters outside of the routine duties of his office; and, it seems to me that, for the protection of my successors, and to enable them to bring before this Association such matters as come to their attention, and which they

should properly bring to the attention of the Association, the Constitution should be amended, and that the Secretary be permitted, and directed, and that it be made his duty, to make a report.

The expenditures I have made during the year have been ordered paid by the Executive Committee, and I have no report to make in that regard.

The President: The next business in order is a report that we are not willing to dispense with—the Report of the Treasurer.

The Treasurer read his report, which was as follows:

TREASURER'S REPORT.

To the Ohio State Bar Association:

The undersigned is pleased to be able to report a better condition of the finances of the Association than during the last two years—thanks to the economical supervision of the Executive Committee, and the perhaps too persistent pressure of the Treasurer demanding payment of dues; but I wish I was possessed of the ability of the Treasurer of the Hamilton County Bar Association, who seems to be able to collect easier $5,000 per annum, than your Treasurer can six to eight hundred dollars.

I beg to call attention to the fact that a number of gentlemen still manage to take advantage of the Committee on Admissions. Members having been delinquent for years and suspended for non-payment of dues apply to be admitted as new members and the Committee, unacquainted with their delinquency, report favorably upon their application. I have in every instance, as soon as I discovered the mistake, refused to place the name of the applicant on the roll of members until they had paid the full sum of $5.00.

There are still many members living in the interior part of the state, and distant from commercial centers, who send a check on a local bank for $2.00 as payment of dues, subjecting the Association to considerable expense of collecting the small amount of dues.

Although death has, since we last met here, again invaded our ranks, we still have a larger number on the roll of members than ever before, although I regret that I was obliged to mark "suspended" a considerable number of delinquents, whose names appear on the roll as published. I have, however, spared no labor or postage to remind gentlemen "suspended" that they are still indebted, it has had the good effect to bring back many who seemed lost to us.

It may interest you to know that of those who organized this Association in 1880 at Cleveland, there are now less than forty on our roll of these oldest members. I wish to note as a laudable example to be imitated by others of our good brothers, who, not wishing again to become delinquent, paid a number of years in advance, to July, 1900.

The following is a detailed report of the receipts and disbursements of the Treasurer.

To balance cash on hand at the beginning of last session, July 15, 1897..	$458 91	
To admission fees	110 00	
To dues from five members readmitted	42 00	
To dues received during the session	162 00	
To dues collected since adjournment for the year 1897 and previous years	412 00	
To dues for 1898 and subsequent years,	77 00	
To cash received from Secretary for back numbers of reports sold	8 00	
To cash from J. C. Scroggs for printing of extra copies of Memorials of Jacob Scroggs	1 24	
To interest on bank deposits	6 00	
		$1,277 15

I ask credit for the following disbursements:

1897.			
July 20.	By cash paid Secretary	$59 20	
July 20.	By cash paid Secretary	60 00	
July 20.	By Committee on Law Reform and Judicial Administration	109 50	
July 20.	By Committee on Admission	2 30	
July 20.	By J. O. Troup, member of Executive Committee	6 00	
July 20.	By charges sending books to Toledo	40	
July 20.	By T. Dewey, wrongfully collected, repaid	3 00	
July 20.	By bank charges, collecting checks	1 60	
Oct. 5.	By cash paid Emory & Smith, stenographers	50 20	
Oct. 5.	By cash for envelopes and printing bill-heads	3 50	
Oct. 5.	By cash, express charges sending books to Secretary	55	
Nov. 12.	By cash, Laning Printing Co.—printing reports	294 90	
Nov. 17.	By cash, Secretary H. B. Arnold	1 54	
1898.			
Jan.	By cash for postage and postal cards	8 85	
June	By printing postal cards and receipts	1 75	
July	By printing 300 notices	2 25	
July	By cash, express charges for books to Put-in-Bay	50	
July	By cash, Treasurer's charges	75 00	
	Total		$681 04

RECAPITULATION.

Balance cash, last year		$458 91
Total receipts		818 24
		$1,277 15
Disbursements		681 04
Balance		$596 11

There are still twenty-eight members delinquent for the year 1897, forty-eight since July, 1897, and many more for 1896 and previous years.

Respectfully submitted,

L. H. PIKE,
Treasurer.

R. D. MARSHALL,
Chairman Executive Committee.

Mr. H. B. Arnold: I move that the report be received, approved, and placed on file.

Mr. M. R. Patterson, Columbus: I notice a statement in that report that I did not notice as a member of the Executive Committee, and I do not know whether I am right in the position that I am about to take. I notice the statement in the report that the Treasurer exercises the right of refusing to report applications of persons who have heretofore been members of the Association until they pay up the delinquent dues that have accrued in the meantime. Now, if that is the constitutional provision, I think it ought to be changed. Not knowing what the constitutional provision is in that respect, I suggest that this report lay over for the present until that can be examined.

The President: Do you make a motion to that effect?

Mr. Patterson: Well, if it is necessary, I do. I move that the motion which has been made to receive the report be postponed until tomorrow sometime.

Mr. R. D. Marshall: I call the attention of the gentlemen to page 14 of the Constitution, pertaining to this question: "The admission fee will, in all cases, be $2.00. The annual dues of the members shall be $2.00 to be paid yearly, on or before the first day of the annual meeting of the Association, and after each annual meeting the Treasurer shall notify each member in arrears for dues of the amount due; and any member who shall remain in default for dues until the close of the annual meeting next following such default, shall be suspended and dropped from the rolls, and shall not be reinstated until all back dues are paid; provided, however, that in case such back dues amount to more than $5.00, such members may, upon recommendation of the Committee on Admissions, be reinstated on payment of the sum of $5.00."

That seems to be applicable.

Mr. Patterson: That does not authorize the Treasurer, as I understand it, to take any such action as he has taken. That is a matter with the Association. When applications are filed here by persons to become members of this Association, I take it that those applications should be read, and that the Association be given an opportunity to determine the question; and that the Treasurer has no right, under that authority, to say that those names shall not be reported here.

Mr. Louis H. Pike: Mr. President, in former years —not this year, because the Committee has tried to avoid that at the present session—some gentlemen have handed in applications, and, as stated in the report, they haven't always known that the applicants were former members and had been suspended. They have reported them, and the Association has adopted the report. As this provision that Brother Marshall has just read is a provision of the Constitution, it would be clearly a violation of the Constitution to admit any one, by a mere mistake of the Committee, for two dollars, when he is really a delinquent member and ought to pay five dollars. It was necessary for me to report such member to the Association and to tell them that he is a delinquent member, and tried to get in by paying two dollars. I simply let them know what the provision of the Constitution is and let them pay over the balance. Otherwise I think I am justified in not placing their names on the roll, if by some mistake they were reported by the Committee on Admissions.

Mr. H. A. Mykrantz: As Chairman of the Committee on Admissions and Elections, I deem it my duty to speak in this connection. The Chairman has been particularly careful to see that the constitutional provisions are complied with, and that every member com-

plies with them on his reinstatement and admission; and, to that end, we have carefully run over the Treasurer's books to find out whether any one who made application was entitled to admission or compelled to be reinstated. The circumstance that Judge Pike speaks of was several years back, when one member was reported and there was a misunderstanding as to whether he had ever been a member or not.

Judge Pike, Toledo: One was last year too.

Mr. Mykrantz: We have had no difficulty of late. We have frequently asked them whether they had been a member, and have looked over the Treasurer's books. The Committee intend to have the constitutional provisions complied with as long as they remain the way they are.

The motion to postpone consideration of the Treasurer's report until tomorrow was lost; and the motion to receive and place the same on file, carried.

The President: The next is the report of the Executive Committee.

Mr. R. D. Marshall, Dayton: In my opening statement, I stated to you what will constitute a considerable part of the report of the Committee, but I will now state further, that the Committee, immediately after the election of the members, met together before they left Put-in-Bay, and organized by electing a Chairman and Secretary, and then agreed that they would hold a meeting of the Committee in Columbus the latter part of December. That meeting was held and attended by a large number; I think, as far as I know, the largest number of the Committee that ever attended any one meeting. We took up the matter of securing some gentleman to address the Convention. We canvassed various names and determined, as you might call it, "priorities," as to which we thought would first be pre-

ferred by the Convention, and we solicited, or rather, requested them, or invited them, to address the Association; feeling that it was not wise to publicly state or let any one know what the order of preferences was, if there were any, so far as the Committee had determined. We found it not a very easy task to secure men of the prominence in the profession that we desired. Each member of the Committee seemed very desirous that a program should be made up which would be a compliment to the Association. We then invited persons. The President of your Association, is ex-officio, one of the members; and, so far as I am concerned, as Chairman of the Executive Committee, I want to speak with commendation on the action of the President, and also especially of Mr. Patterson, Mr. Troup, Mr. Kibler and Mr. Arnold, as Secretary, as to their co-operation and assistance in this matter; and it was through the efforts of the President that the consent of Mr. Carlisle was obtained to come here and address the Association. Owing to the fact that we had been disappointed heretofore, we were very anxious that disappointment should not overtake us again, and I feel certain that it would not have overtaken us except for the misfortune and the bereavement which have taken place, which all of us very much regret.

We then met again, in May, to prepare the program, and, after it was done, in so far as it was possible, or as men could do it without being sacreligious, after we looked over the program, and the names that we had selected, and the hopes that we had, we felt, as far as men could feel, like the Almighty did after he had finished the creation, and declared that we were satisfied in reference to it, and I believe that every member of the Association was satisfied. We then arranged several matters which I have spoken of in

the opening, and now have to say that notwithstanding this bereavement of Mr. Carlisle and this misfortune as to Judge Owen, we hope to have, and I have no doubt will have, a very good meeting at this time. And I will say that the Executive Committee, each and all of them, have done everything that they could do, or that they could see to be done, looking toward making this a successful meeting; and if the program is not up to expectations, it has not been because the Committee did not try to make it so.

After learning from the wife of Judge Owen of his illness and inability to be present, we at once took up the matter with Judge Hammond, of the Federal Court, promptly on the day that we learned of Judge Owen's illness and inability to be here, and he answered saying that he felt, under the circumstances, thankful that we had extended the invitation to him, but that he felt that his duty to the Association, as well as to himself, was to decline the honor. However, he expected to be here, and yet he felt that he wouldn't be doing justice to either the Association or himself to attempt to deliver an address at this meeting on so short a notice. He then added: "But, however, if still you desire me to speak to the Association, and 'let it be a go-as-you-please and catch-as-catch-can,' I will be willing to do so, and do the best I can." I immediately wired back to him: "Let it be a go-as-you-please and catch-as-catch-can, and be here with us, and address us on that day."

He accepted it, and will be here.

The President: I don't know as any action is necessary. If any one has a motion to entertain —otherwise the report of the Committee will be noted on the minutes.

The next business in order is the Report of the Committee on Judicial Administration and Legal Reform.

The report was read by Hon. John A. Shauck, Dayton, and was as follows:

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL REFORM.

To the State Bar Association of Ohio:

Your Committee on Judicial Administration and Legal Reform submit the following report:

Since the last meeting of the Association, the Committee has held three sessions, at which attention has been given to all suggestions submitted for its consideration. Those deemed wise and of sufficient importance to merit attention from the Association are submitted in the form of suggestions to the Association. It has not been thought necessary to reduce them to the form of statutes since another meeting of the Association will precede the next meeting of the General Assembly.

The measures suggested, follow:

1. That the scintilla rule be abolished by statute and in all cases where the evidence is such that the trial judge is of the opinion that a verdict in favor of one party or the other should be set aside, he shall direct the verdict which the evidence and the law require.

2. That it be provided by statute that the trial judge or judges shall, when satisfied that allegations or denials are made in pleadings without the expectation of maintaining them upon the trial, assess a penalty of double the amount of the costs made in consequence of such allegations or denials.

3. That the laws providing for the creation of corporations be so amended that before a corporation is authorized to transact any business, the entire amount of its authorized capital stock shall be subscribed and fully paid in, either in money or its equivalent, and that there shall be an official investigation to determine that all property used in payment for stock is taken by the corporation at not more than its market value.

4. That the statute be so amended that where a person is convicted of murder in the first degree or murder in the second degree, and the reviewing court is satisfied that the evidence required a conviction for a lower degree, it shall, instead of reversing the judgment and remanding the cause for a new trial, modify the judgment by imposing a sentence appropriate to the grade of crime of which it finds the accused might have been convicted, it not being a higher grade than that of which he was convicted.

5. That the statutes be so amended as to prohibit arrests for offenses that are not *mala in se*, and provide for the institution of proceedings by the prosecuting officer by filing an information before the proper court and causing a summons to issue thereon.

6. That the law relating to larceny, embezzlement and receiving or concealing stolen property be so amended that where the property is found by the jury to be of a greater value than $100, the penalty shall, in all cases, include imprisonment in the penitentiary, but where it is found to be of a less value than $100, the trial judge may, at his discretion, sentence as for such felony or as is now provided by law, where its value is less than $35.00.

7. That a municipal corporation may maintain any appropriate action to recover back its property illegally conveyed or transferred, notwithstanding the

participation of its officers in the unlawful transaction in which such conveyance or transfer was made, or in which such property was acquired by the corporation.

8. It shall be a crime, punishable as for obtaining money under false pretenses, for any president, director, manager, cashier or other officer of any banking institution, to assent to the reception of deposits, after he shall have had knowledge of the fact that such institution is insolvent, or in failing circumstances; and any such officer, agent or manager shall be individually responsible for such deposits so received.

9. That no one but a member of the bar shall be eligible to the office of probate judge.

It will be observed that the third of these suggestions relates to a subject upon which a recommendation was made by this Committee a year ago. It is believed that the importance of the subject would justify the repetition. It is, however, further justified by the facts that the abuses arising from defects inherent in the organization of private corporations in this state have been the subject of comment in the addresses of two Presidents of this Association, and of an extended address by the late Mr. Bateman three years ago, when the adverse criticisms of the statutes upon the subject were apparently approved by most of the members of the Association; and that this subject was not reached upon the consideration of the report a year ago. It will also be observed that, whereas, it was recommended in the former report that the statute be so amended as to require the payment of fifty per cent. of the authorized capital stock, it is now recommended that the payment of the full amount be required. The change in the recommendation has resulted from a more careful consideration of the subject upon which it appeared that if the actual capital of a corporation is

less than its authorized or apparent capital, there is a departure from sound principle which an association of lawyers should not approve. Unless payment in full of the capital stock is required, these artificial persons, the offspring of the state, cannot come into being entitled to the confidence which their parentage invites.

Other recommendations embraced in the former report, but not reached upon its consideration by the Association, are omitted here because they have been the subject of legislative action at the recent session of the General Assembly.

JOHN A. SHAUCK.
J. J. MOORE.
F. S. MONNETT.
SIMEON M. JOHNSON.
DAVID J. NYE.
LEWIS B. HOUCK.

Judge John David Jones, Newark: I move that the report be received, and that the consideration of the report be postponed until tomorrow.

The President: The Secretary calls my attention to the fact that discussion of reports of committees is set for tomorrow afternoon.

Mr. R. D. Marshall: I want to call attention to the fact that the Executive Committee, with the concurrence of Judge Dickman, reached the conclusion that it would be wise to substitute the time assigned for Mr. Carlisle tomorrow morning and let Judge Dickman address the Association at that hour; and it has been so arranged, and Judge Dickman will address the Association to morrow morning at 10:30.

The motion to receive the report of the Committee on Legal Administration was seconded and carried.

The President: The next in order is the report of the Committee on Legal Education.

Mr. Gilbert H. Stewart, Columbus: The Committee on Legal Education has held one meeting, and in view of the fact that a special Committee was appointed last year to consider the question and submit the same to the Supreme Court, as to the amendment of Rule XIV as to admission to the bar, the Committee authorize me to say that they have no report to make.

The President: I think the Committee did enough in that matter. That is a great triumph of the Association. The next thing in order is the report of the Committee on Grievances.

Mr. Chase Stewart, Springfield: The Committee on Grievances takes occasion to make a report similar to that on previous occasions, viz: No report to make.

The President: That is the best report that could be made. It will stand approved without any formal action.

The next in order is the report of the Committee on Legal Biography. Mr. Harris, Chairman, is not here, but sends a telegram that the train missed the boat, and that he would be on hand the next boat. I suggest that by common consent we have his report tomorrow afternoon.

There are some special committees whose reports will now be in order. The first is the Committee on Railroads and Transportation. Is there any report from that Committee?

Mr. H. B. Arnold: Mr. Parks is in Toledo. In his behalf I will say that he procured a rate of one and one-third fare, without the necessity of securing certificates at the meeting. It is an open rate, obtained from the railroads at their offices, and if any members have not obtained the rate of one and one-third fare for

the round trip, they can obtain it from their agents. It is simply because the local agents have not been authorized by the companies.

The President: The next business in order is the report of the Special Committee to Present Rules to Supreme Court for Examination and Admission to the Bar.

Gilbert H. Stewart, Columbus: In the absence of Mr. Lawrence Maxwell, Jr., the Chairman of the Committee, I desire to present the report of the Committee: To the President of the State Bar Association:

The Special Committee appointed at the last annual meeting of the Association to present to the Supreme Court the views of the Association relating to admission to the bar, respectfully report that after several conferences they drafted, and, on November 11, 1897, presented to the Supreme Court the revision of Rule XIV, (copy of which is hereto attached), submitting their recommendation with an argument in support thereof, to which the court gave a patient and attentive hearing. The Committee also files the rule subsequently, on December 17, 1897, adopted by the court.

The Committee sought to secure the following reforms:

1. A more permanent tenure for the Standing Committee.

2. The public registration of law students.

3. Uniform examinations and more definite standing.

4. Reasonably high and definite standard of general education as a condition of admission to the examinations.

It will be seen that the court adopted all of the suggestions of the Committee, excepting that it did not fix the standard of general education as high as the

Committee had proposed. However, a step has been taken in the right direction, and it is hoped that the court may hereafter raise the standard of general education.

LAWRENCE MAXWELL, JR.,
GILBERT H. STEWART,
M. R. PATTERSON,
Committee.

RULE XIV—ADMISSION TO THE BAR.

AS PROPOSED BY THE COMMITTEE.

Section 1. Except as provided in section 560 of the Revised Statutes concerning persons who have been admitted and practiced in the highest court of another state, or in the Supreme Court of the United States for a period of five years, no person shall be admitted to the bar except upon an examination and certificate of the Standing Committee on Examinations.

Section 2. There shall be appointed, to take effect on the first day of January, 1898, nine discreet and judicious attorneys and counselors at law to be known as the Standing Committee on Examinations. Three members of the Committee shall be appointed for one year; three for two years and three for three years. Their successors shall be appointed for the term of three years each.

Section 3. The Standing Committee shall hold an examination of applicants for admission to the bar in the Supreme Court room on the second Tuesday of each June and October. The Committee may also appoint an examination to be held on either of said days at some other place or places in the state for the accommodation of the graduating classes of law schools. No other examinations will be held. Examinations must

be conducted under the direction of at least five members of the Standing Committee, each of whom shall report in writing for or against the admission of each applicant.

Section 4. No applicant shall be admitted to the oath of office unless a majority of the members conducting the examination shall certify that they find him to have a competent knowledge of the law and to have sufficient general learning to discharge the duties of an attorney and counselor at law, and shall recommend his admission. Such certificate shall not be made unless the applicant has sustained on his written answers to the printed questions of the examiners an average grade of 75 per cent. on an examination embracing the following subjects: The law of real and personal property, torts, contracts, evidence, pleading, partnership, bailments, negotiable instruments, agency, suretyship, domestic relations, wills, corporations, equity, criminal law, constitutional law, federal procedure and legal ethics. Unless the applicant produces a diploma or certificate showing that he is a graduate or matriculate of a college or university, a graduate of a public high school, or of a private academy of equivalent standing, or the holder of a high school certificate issued by the Ohio State Board of School Examiners, the examination shall also embrace the following subjects: English composition, arithmetic, algebra to quadratic equations, plane geometry, the outlines of English and American History, and first year's Latin, or as a substitute for Latin, French or German.

The printed interrogatories and the answers of the applicants thereto, shall be submitted to the court with the report of the examiners, and, together with all certificates and papers required under this rule, shall be filed with the clerk and preserved.

Section 5. Every resident of this state who commences the study of law on and after January 1, 1898, either under the tuition of an attorney-at-law, or at a law school, whether located in this state or elsewhere, shall file with the clerk the certificate of such attorney or of the chief officer of such law school, as the case may be, showing his name, age and residence and the date when he commenced the study of law, which certificate shall be accompanied by a fee of $1.00. As to all such persons the three years' study of law required by section 560 of the Revised Statutes shall date from the filing of such certificate.

Section 6. Every resident of this state who shall have commenced the study of law prior to January 1, 1898, shall on or before the first day of March, 1898, file with the clerk a certificate of his preceptor, or of the chief officer of his law school, showing his name, age and residence, and the time when and the place where, and under whom he commenced the study of law, which certificate shall be accompanied by a fee of $1.00.

Section 7. Every person who shall commence the study of law while a non-resident of this state, and who has not been regularly admitted as an attorney-at-law in some court of record within the United States, shall, on coming into this state to reside, file with the clerk an affidavit showing that he has come into the state for the purpose of making it his permanent residence, and stating his name, age, and present and former residence, and also the certificate of his preceptor, or of the chief officer of his law school, showing the time when, and the place, or places, where and under whom he has studied law, which papers shall be accompanied by a fee of $1.00.

The one year's residence in this state required of such persons by section 560 of the Revised Statutes shall date from the filing of such papers.

Section 8. Every person entitled to be admitted to the examination, under section 560 of the Revised Statutes, on the ground that he has been regularly admitted as an attorney and counselor at law in some court of record within the United States, shall not more than sixty nor less than thirty days before the time fixed for the examination, file with the clerk (1) an affidavit showing that he is a resident of the state, or that he has come into the state for the purpose of making it his permanent residence, and stating his name, age and former and present residence. (2) His certificate of admission to the bar, which if issued less than three years before such filing, must be accompanied by the certificate of his preceptor, showing the extent and character of his study of the law, and (3) the certificate of a judge of the court of record in which he has practiced law, showing the time such judge has personally known him, and his moral and professional standing at such bar, which application and paper shall be accompanied by an examination fee of $10.00, and a registry fee of $1.00.

Section 9. If the filing of any affidavit, certificate or other paper required by this rule has been omitted by excusable mistake or without fault, the court may order such filing as of the proper date.

Section 10. Except as provided in section 8 concerning persons who have been admitted to the bar in some court of record within the United States, every person who desires to have his name enrolled for examination must, not more than sixty nor less than thirty days before the time fixed for the examination, file with the clerk his application for admission to the

bar, giving his name, age, residence and post-office address, and with such application the certificate of qualification required by section 560 or 561 of the Revised Statutes, as the case may be. Except as provided in section 561 of the Revised Statutes, each applicant must produce a certificate of qualification as required by section 560 of the Revised Statutes, signed by his preceptor, and in no case will the certificate of any other attorney or counselor at law be received unless it be shown by the affidavit of the applicant that his preceptor is dead or that his certificate cannot, for some reason satisfactory to the court, be obtained. And in every case the certificate must show that the certifier has personal knowledge of the length of time the applicant has been engaged in the study of the law and that the certifier's belief that the applicant has sufficient legal knowledge and ability to discharge the duties of an attorney and counselor at law is based upon personal examination of the applicant. The certificate shall also show the name and post-office address of the applicant's preceptor.

Section 11. No certificate, affidavit or other paper produced in conformity with this rule shall be deemed conclusive evidence of the facts therein stated, and in all cases the court must be satisfied of the truth thereof before the applicant shall be admitted to an examination.

Section 12. Every application for admission to an examination must be accompanied by an examination fee of $10.00, which will be returned to the applicant if his name is not placed on the examination roll. If his name is placed on the examination roll, and he fails to receive a certificate of qualification, he shall not be required to pay any further sum upon a second renewal of his application.

Section 13. After the expiration of the thirtieth day before the examination the court will examine the papers filed by the applicant and cause him to be notified whether he will be admitted to the examination, and if so admitted, will cause his name to be placed on the examination roll which will be delivered to the Standing Committee.

Section 14. The Standing Committee may make rules not inconsistent herewith for the conduct of the examinations, which, together with this rule, shall be published in pamphlet form for distribution by the Standing Committee.

Section 15. The applicant, upon receiving the oath of office, shall sign a roll showing the date of his appointment and his place of residence.

Section 16. The clerk shall enter the date of the filing of all papers under this rule with a pertinent description of the same in a record provided for that purpose, and shall enter all sums received under this rule in a cash book, showing the date, from whom and for what received, and shall pay the same out upon the order of the Chief Justice in payment of the expenses of the examinations, and for no other purpose. That is to say: costs of necessary printing and stationery; to the clerk for each certificate of admission issued to an applicant, $1.00; and also the registration fees paid under this rule; to each member of the Standing Committee his necessary traveling expenses, not exceeding $5.00 per day, and $10.00 per day as compensation for each day actually employed in the work of the Committee. If the funds are not sufficient such pro rata distribution shall be made as the funds will warrant.

RULE XIV—ADMISSION TO THE BAR.

(RULE AS ADOPTED BY THE COURT.)

Section 1. Except as provided in section 560 of the Revised Statutes concerning persons who have been admitted and practiced in the highest court of another state, or in the Supreme Court of the United States, for a period of five years, no person shall be admitted to the bar except upon an examination and certificate of the Standing Committee on Examinations.

Section 2. There shall be appointed, to take effect on the first day of January, 1898, nine discreet and judicious attorneys and counselors-at-law, to be known as the Standing Committee on Examinations. Three members of the committee shall be appointed for one year, three for two years, and three for three years. Their successors shall be appointed for the term of three years each.

Section 3. The Standing Committee shall hold an examination of applicants for admission to the bar in the city of Columbus, on the second Tuesday of each March, June and October. No other examinations will be held. Examinations must be conducted under the direction of the committee, a majority of whom shall report in writing for or against the admission of each applicant.

Section 4. No applicant shall be admitted to the bar unless a majority of the members conducting the examination shall certify that they find him to have a competent knowledge of the law and to have sufficient general learning to discharge the duties of an attorney and counselor-at-law, and shall recommend his admission. Such certificate shall not be made unless the applicant has sustained on his written answers to the printed questions of the examiners an average grade of 75 per cent., on an examination embracing the following

subjects: The law of real and personal property, torts, contracts, evidence, pleading, partnership, bailments, negotiable instruments, agency, suretyship, domestic relations, wills, corporations, equity, criminal law, constitutional law, and legal ethics. As a condition of admission to the examination, each applicant shall produce a diploma or certificate showing that he is a graduate or matriculate of a college or university, a graduate of a public high school, or of a private academy of equivalent standing, or the holder, of a certificate issued by the Board of School Examiners, under section 4074, Revised Statutes, or a diploma of graduation from any of the common schools of the state, under what is known as the Boxwell law, as amended April 18, 1896 (92 Ohio Laws, 198). The printed interrogatories and the answers of the applicants thereto shall be submitted to the court with the report of the examiners, and, together with all certificates and papers required under this rule, shall be filed with the clerk and preserved.

Section 5. Every resident of this state who commences the study of law on and after January 1, 1898, either under the tuition of an attorney-at-law or at a law school, whether located in this state or elsewhere, shall file with the clerk of the Supreme Court the certificate of such attorney or of the chief officer of such law school, as the case may be, showing his name, age and residence, and the date when he commenced the study of law, which certificate shall be accompanied by a fee of fifty cents. As to all such persons the three years'study of law required by section 560 of the Revised Statutes shall date from the filing of such certificate.

Section 6. Every resident of this state who shall have commenced the study of law prior to January 1,

1898, shall, on or before the first day of March, 1898, file with the clerk a certificate of his preceptor or of the chief officer of his law school, showing his name, age and residence, and the time when and the place where, and under whom he commenced the study of law, which certificate shall be accompanied by a fee of fifty cents.

Section 7. Every person who shall commence the study of law while a non-resident of this state, and who has not been regularly admitted as an attorney-at-law in some court of record within the United States, shall, on coming into this state to reside, file with the clerk an affidavit showing that he has come into the state for the purpose of making it his permanent residence, and stating his name, age and present and former residence, and also the certificate of his preceptor, or of the chief officer of his law school, showing the time when, and the place, or places, where and under whom he has studied law, which papers shall be accompanied by a fee of fifty cents.

The one year's residence in this state required of such persons by section 560 of the Revised Statutes shall date from the filing of such papers.

Section 8. Every person entitled to be admitted to the examination under section 560 of the Revised Statutes, on the ground that he has been regularly admitted as an attorney and counselor-at-law in some court of record within the United States, shall, not more than sixty nor less than thirty days before the time fixed for the examination, file with the clerk (1) an affidavit that he is a resident of the state, or that he has come into the state for the purpose of making it his permanent residence, and stating his name, age and former and present residence, (2) his certificate of admission to the bar, which, if issued less than three

years before such filing, must be accompanied by the certificate of his preceptor, showing the extent and character of study of the law, and (3) the certificate of a judge of the court of record in which he has practiced law, showing the time such Judge has personally known him, and his moral and professional standing at such bar, which application and papers shall be accompanied by an examination fee of $5.00 and a registry fee of fifty cents.

Section 9. If the filing of any affidavit, certificate or other paper required by this rule has been omitted by excusable mistake or without fault, the court may order such filing as of the proper date.

Section 10. Except as provided in section 8, concerning persons who have been admitted to the bar in some good court of record within the United States, every person who desires to have his name enrolled for examination must, not more than sixty days nor less than thirty days before the time fixed for the examination, file with the clerk his application for admission to the bar, giving his name, age, residence and post-office address, and with such application the certificate of qualification required by sections 560 or 561 of the Revised Statutes, as the case may be. Except as provided in section 561 of the Revised Statutes, each applicant must produce a certificate of qualification as required by section 560 of the Revised Statutes, signed by his preceptor, and in no case will the certificate of any other attorney or counselor-at-law be received unless it be shown by the affidavit of the applicant that his preceptor is dead or that his certificate can not, for some reason satisfactory to the Court, be obtained. In case the length of study shown by the certificate falls short, by sixty days or less, of a full three years' course, a supplemental certificate may be presented

by the applicant at the time of the examination, showing, with such former certificate, a full three years' study. And in every case the certificate must show that the certifier has personal knowledge of the length of time the applicant has been engaged in the study of the law. The certificate shall also show the name and post office address of the applicant's preceptor.

Section 11. No certificate, affidavit or other paper produced in conformity with this rule shall be deemed conclusive evidence of the facts therein stated, and in all cases the court must be satisfied of the truth thereof before the applicant shall be admitted to examination.

Section 12. Every applicant for admission to an examination must be accompanied by an examination fee of $5.00, which will be returned to the applicant if his name is not placed on the examination roll. If his name is placed on the examination roll, and he fails to receive a certificate of qualification, he shall not be required to pay any further sum upon a second application. For each subsequent application a fee of $5.00 shall be paid. If the applicant, on examination, shall be rejected, he may be admitted to an examination after six months from the date of such rejection, upon filing a certificate that he or she has studied law for six months subsequent to date of the former examination. But an applicant rejected at the October examination may be admitted to the following March examination upon producing a proper certificate of study from the date of such rejection. And all rejected applicants who have been reported by the committee as having reached a grade of sixty one-hundredths may be admitted to the next following examination upon producing a like certificate of study.

Section 13. After the expiration of the thirtieth day before the examination the court will examine the

papers filed by the applicant, and cause him to be notified whether he will be admitted to the examination unconditionally, or subject to the production of a supplemental certificate of additional study, when that may be necessary, and if so admitted, will cause his name to be placed on the examination roll which will be delivered to the Standing Committee.

Section 14. The Standing Committee may, subject to the approval of the court, make rules not inconsistent herewith for the conduct of the examinations, which, together with this rule, shall be published in pamphlet form for distribution by the Standing Committee.

Section 15. The applicant, upon receiving the oath of office, shall sign a roll showing the date of his admission and his place of residence.

Section 16. The clerk shall enter the date of the filing of all papers under this rule, with a pertinent description of the same, in a record provided for that purpose, and shall enter all sums received under this rule in a cash book, showing the date from whom and for what received, and shall pay the same out upon the order of the Chief Justice in payment of the expenses of the examinations, and for no other purpose. That is to say: costs of necessary printing and stationery; necessary janitor or messenger service; to the clerk for each certificate of admission issued to the applicant, $1.00 and also the registration fees paid under this rule; to each member of the Standing Committee his necessary traveling expenses actually incurred, and $5.00 per day as compensation for each day actually employed in the work of the committee. If the funds are not sufficient, such pro rata distribution shall be made as the funds will warrant.

The report was accepted and approved.

Mr. R. D. Marshall: I think the thanks of the Association should be tendered to the Committee and the Supreme Court in this behalf.

Seconded, and carried.

The President: The next in order is the report of the Special Committee to Welcome the American Bar Association at Cleveland. Judge Hunt is not here. Is there any report from that Committee?

Mr. A. W. Jones, Youngstown: Mr. President, I have no report to make, and, in fact, if I should admit the truth, I was compelled to be some place else. Judge Hunt was a host within himself, and he attended to the whole matter, in a manner satisfactory to himself and the other members of the Committee.

The President: The next business is the report of the Committee to Examine Charges of Professional Misconduct.

Mr. J. J. Moore, Ottawa: Mr. President, we have no formal report to make. I can make a statement of what was done by the Committee. It was appointed, as we observe on page 144 of the proceedings of the State Bar Association, to investigate certain charges made against members of the bar for granting certificates wrongfully to applicants for admission to the bar. As soon as I was notified that I was a member of that Committee, and named first upon it, I took occasion to write to Judge Bateman, of Cincinnati, who had introduced the resolution, to secure what information I could relative to what was claimed in the resolution; and I received a reply from him stating that he had no personal knowledge whatever of the charges; that he introduced the resolution at the instance of another member of the Association.

I further learned, upon inquiry, that the resolution originated with Judge Hall, of Akron. I then wrote

to Judge Hall, and also called a meeting of the Committee at Columbus. Judge Hall replied that he had no personal knowledge, but that he had learned in some way that such action had been had by members of the bar, or one member in particular, without naming him, but he did not desire to be personally connected with the investigation. As I said, I called a meeting of the Committee at Columbus. Mr. Dillon and Mr. Follett, the other members of the Committee, were present, and they had taken some pains to make inquiry to ascertain if any such action had been had by any member of the bar in granting certificates wrongfully to applicants, and they had learned nothing. We also took into our confidence Mr. Kohler, who was one of the examining committee of applicants before the Supreme Court, and resided in Akron, and requested that he should make inquiry at Akron, and if any member of the Summit County Bar Association had any knowledge whatever of any of the practices which were claimed to have existed, that he receive the information and we would hold another meeting; and I made further inquiry, and the other members of the Committee made further inquiry in regard to whether any such thing had been done, and we could ascertain nothing. We went at it blindly, without having furnished to us any information, and, upon diligent inquiry, we could ascertain nothing. So that the Committee has nothing to report, further than the statement which I have made as to the efforts we made to try to ascertain what we could under the resolution that was adopted; and we have failed entirely to ascertain anything. The Committee was perfectly willing to act; desired to do anything that it could, but the party who introduced the resolution, and the party from whom the resolution emanated

—neither could give us any knowledge or facts upon which we could act.

The President: It is certainly very complimentary to the Bar of Ohio that the charges could not be found to have any existence by so able a committee. I believe that completes the reports of the Special Committees. I find no other on the list.

Mr. Asa W. Jones, Youngstown: There is another committee--the Committee on New Rooms for Supreme Court and State Law Library, and I have no doubt that every member of the Association is entirely familiar with what action has been taken. But, in order that it may appear upon our records, I will state this: The legislature, last winter passed an act appropriating $400,000 for the construction of new rooms. It authorizes the purchase of grounds, either adjacent to the state property at Columbus, or to use that. I understand that it has already been determined to erect an east wing to the State House; that plans have been prepared, have been adopted, and, as I understand, the building is to be proceeded with at once by the construction of an east wing to the State House. Well, Judge Burket corrects me. It isn't literally a wing, although it is in effect a wing. In other words, it was provided, I believe, that it shouldn't be attached, and therefore it is not to be attached, but extremely close to it.

A member: A detached wing.

Mr. Jones: A detached wing, yes. And I apprehend that, in the course of another couple of years, the Supreme Court, the Law Library, the Attorney General and the Clerk of Court will have such apartments as will be suitable to the transaction of business. I think the legislature is entitled to a good deal of credit for giving us the $400,000 to put into it.

The President: The report will be noted as received. I suppose no action is necessary upon it. The Secretary desires members, before they go out, to kindly come and sign the Roll of Attendance, and I hope you will all do so.

The President: The next business is the call of Judicial Districts for the names of deceased members.

The First District was called.

Mr. Simeon M. Johnson, Cincinnati: Mr. Warner M. Bateman has deceased since the last meeting of the Association.

The Second, Third and Fourth Districts were called.

Judge Pike: Frank W. Rickenbaugh, an attorney of Toledo, died quite recently.

The death of John J. Hall was reported from the Fourth District.

Robert F. Bartlett, Mt. Gilead: Mr. E. A. Angell, of Cleveland, is reported from the Fourth District as deceased.

The Fifth and Sixth Districts were called.

Judge Pike: I have just inquired of what district Judge Pomerene was. He lived in Coshocton. I do not know whether any one is here from that district to report.

Mr. A. R. McIntire, Mt. Vernon: I regret to be obliged to report the death of Hon. Julius C. Pomerene, of Coshocton, a member of this Association.

The Seventh, Eighth and Ninth Districts were called.

Judge Johnston, Youngstown: The Ninth District has to report the death of Edward H. Fitch, of Ashtabula. I believe provision has already been made for an obituary notice.

The Tenth District was called.

The President: Having heard the reports from the various districts as to deceased members, the next order is remarks on deceased members limited to five minutes each.

Mr. Jacob A. Kohler: I suppose these memorial addresses would come in tomorrow.

The President: Certain ones have been selected. There are others which are not on the program for tomorrow. There is no limit to those which are specially on the program for tomorrow, and this is intended to cover the other cases.

Mr. Thomas P. Dewey, Clyde: Mr. President, I do not know whether there has been any provision made for an obituary upon the life and services of Frank W. Rickenbaugh. If not, I desire to say a word.

Mr. W. H. A. Read, Toledo: I think a member should suggest a word or two, and I should be very glad, as a member of the Lucas County Bar, to have you do it.

Mr. Dewey: I wish to say, Mr. President, that it was my pleasure to be well and intimately acquainted with Mr. Frank W. Rickenbaugh. Mr. Rickenbaugh, like myself, began his career on a farm. He was born and raised near Tiffin, Ohio, and was a graduate of Heidelburg College. He was a young man of sterling integrity; a young man with a bright mind, and was fast making for himself a creditable reputation at the bar. He went to Toledo where he began to practice his chosen profession, and I believe was associated there in the office of Judge Doyle for a time. He was afterwards a United States Commissioner, filling the place with ability and fidelity. He became somewhat engaged in corporate interests in Toledo, and, through his innate ambition and his desire to excel, it is perhaps fair to say that he outdid himself. He overworked him-

self and brought on a lung trouble that resulted in consumption. He went to Arizona, where he sought to get relief and regain health by a climatic change, and came back feeling very much flattered that he had received permanent help; but it seemed that this was delusive, and about a month ago he passed to the beyond.

I want to say for Mr. Rickenbaugh that, among all my acquaintances, I never knew a young man of brighter promise; one whose word, both professionally and privately, could be more depended upon, and I believe that this Association has lost one of its brightest and best members.

I say what I do say in remembrance of my friend wholly ex tempore, and I believe it is due to him that he have a more extended memorial, and I hope it may be done.

Mr. H. B. Arnold: It can be prepared and handed to a member of that Committee. If furnished to the Committee on Legal Biography it will be published in the report.

Mr. Dewey: Very well; I will see that that is done.

Mr. S. G. Cummings: Judge J. C. Pomerene, of the Sixth District, is deceased, and Mr. McBride, who will be here tomorrow, has a memorial prepared; and if the Association will allow him to present that at the proper time, he will be prepared to do so. He could not reach here today, but will be here tomorrow.

Mr. W. H. A. Read, Toledo: Mr. President, in relation to Mr. Frank Rickenbaugh, a memorial that properly expresses the standing that Mr. Rickenbaugh had in Lucas county has been prepared and spread upon the records of our local bar Association. The request of Mr. Dewey was that we furnish something. I will have furnished to the Secretary, to have spread upon

the records of this Association, the memorial there enrolled, if that is what is desired.

The President: You can confer with Mr. Dewey, and have such memorial prepared as you desire.

(For memorial on the late Frank W. Rickenbaugh, see Appendix VIII.)

Mr. A. R. McIntire, Mt. Vernon: If satisfactory, I will make a motion to defer the memorial on Judge Pomerene until the regular program.

Carried.

(For memorial on the late Elgin Adelbert Angell, see Appendix IX.)

Hon. R. D. Marshall: The Executive Committee went out of the order a little at this time, and have made an arrangement with reference to having a musical entertainment more or less as we go along. The more general entertainment will be tomorrow evening, but we expect to have a skirmish line this evening a little while, and I will say here that I am inclined to think that we have something that will be worth hearing.

The President: Where is it to be?

Mr. Marshall: Right in the house; in some place to be selected out here where all can hear it. There is a lady here (Mrs. E. A. Lawrence) who, as a harpist, the great musical leader, Thomas, says is the ablest and the greatest harp soloist in the United States. She will be here this evening, and tomorrow evening, and you will not be sorry that you were present.

Mr. Jacob A. Kohler, Akron: I would like to ask if the Chairman has also provided a bag-pipe?

Mr. Marshall: The Committee has provided a bag-pipe, but nobody to blow it. Brother Kohler can blow it.

The Association, at 4:45 P. M., adjourned until tomorrow morning, July 13th, at 10:30 A. M.

SECOND DAY—MORNING SESSION.

The President: One of the pleasures of being President is to lay before you enjoyable addresses, and I have the pleasure now of announcing one upon a subject which interests us all, and by a gentleman with qualifications which come of long experience upon our highest bench, a lifelong student and thinker.

We will now have the pleasure of listening to an address upon "The Agency of the Bar and the Bench in Making and Developing the Written and Unwritten Law," by Judge Franklin J. Dickman, whom I now present. (Applause.)

Judge Dickman delivered an address, for which see Appendix II.

Judge Johnston: On yesterday, Mr. President, there was submitted, by the Committee on Judicial Administration and Legal Reform, a number of propositions for the consideration of this Association. By consent, at that time, the consideration of these propositions was postponed until this afternoon. They are important, each of them, and ought to, and undoubtedly will, receive the careful consideration of this Association. In order to do that, as full an attendance as possible should be had when these matters are under discussion. I know that quite a number of persons who are here at this time are desirous of going home this afternoon, and will do so; and, in view of that, I move that the order of business be so changed that we proceed with the consideration of these propositions now.

Judge Pike: I suggest that this is out of order. The change of the order of proceedings comes from the Executive Committee.

Judge Johnston: I apprehend this Association is above the Executive Committee; has more power than the Executive Committee.

The President: The motion is that, for the reasons stated, we now proceed to consider the reports of the committees, the chief one being the Committee on Judicial Administration and Legal Reform.

The motion was seconded and carried.

The President: We will now proceed to the discussion of the reports of committees. As I suppose there is no report which will really call for discussion except the report of the Committee on Judicial Administration and Legal Reform, I will ask the Chairman of that Committee to read, in order, the various recommendations.

Judge John David Jones, Newark: In order to bring the matter before the Association more exactly, I move that the report of the Committee be adopted.

Seconded.

The President: It is moved and seconded, gentlemen, that the report of the Committee on Judicial Administration and Legal Reform be adopted.

Judge John David Jones: Now, Mr. President, I move that a division of the question be had, and that each proposition be considered separately.

The President: No formal motion to that extent will be necessary, probably unless demanded, and I will ask the Chairman of that Committee to kindly read each one of the recommendations separately.

Mr. H. A. Mykrantz: There are some lawyers who wish to become members of the Association, and are desirous of taking part in the discussion. I will therefore ask the privilege of submitting the report.

The President: I believe it is the unwritten law

of the Association that a report of the Committee on Admissions and Elections is always in order.

Mr. Mykrantz, Chairman of the Committee on Admissions and Elections of Members, read the following supplemental report.

SUPPLEMENTAL REPORT OF COMMITTEE ON ADMISSIONS AND ELECTIONS.

To the Ohio State Bar Association:

Mr. President, and Gentlemen: Your Committee on Admissions and Elections further report that we recommend the election of the following named lawyers as members of this Association:

Thos. Beer, Bucyrus.
David A. Allen, Newark.
Wm. H. Hubbard, Defiance.
Albert Douglas, Chillicothe.
Henry Collings, Manchester.
T. F. Black, Mansfield.
Wade H. Ellis, Cincinnati.
James H. Day, Celina.
John W. Loree, Celina.
Chas. M. Melhorn, Kenton.
J. D. Creed, Cincinnati.
E. M. Wickham, Delaware.
Thos. E. Steele, Columbus.
T. B. Fulton, Newark.
Edward B. McCarter, Columbus.
H. J. Weller, Tiffin.
Ira H. Crum, Columbus.
G. B. Solders, Cleveland.
W. W. Parmenter, Lima.

We recommend the reinstatement of the following named members:

A. F. Broomhall, Troy.
John C. Hale, Cleveland.
Wm. H. Jackson, Cincinnati.
George S. Long, Troy.
James H. Collins, Columbus.
H. J. Booth, Columbus.

Respectfully submitted,

H. A. MYKRANTZ,
Chairman.

It was moved that the Secretary be instructed to cast the ballot of the Association for the gentlemen named.

The motion was seconded, and carried unanimously, whereupon the Secretary did as directed, and the gentlemen were each declared to have been duly elected to membership.

The Secretary read the first recommendation of the Committee on Judicial Administration and Legal Reform, which was as follows:

"That the scintilla rule be abolished by statute, and in all civil cases where the evidence is such that the trial judge is of the opinion that a verdict in favor of one party or the other should be set aside, he shall direct the verdict which the evidence and the law require."

The President: The form in which the motion has been put will require us to vote separately upon each recommendation. Are there any remarks?

Mr. James O. Troup, Bowling Green: Mr. President and Gentlemen of the Association: I believe that this recommendation of the Committee, as well as some others, should, in some form, receive the unanimous

endorsement of this Association. Whether in the form in which it is presented, I am in very serious doubt. But that matter I will speak of presently. That the scintilla rule should be abolished, I entertain no doubt whatever, and in the few minutes which I may occupy with the subject, I desire to present some of the reasons why I believe it should be abolished. The first reason, not a conclusive one, but a reason with considerable, force, I think, is that, in the march of progress, the rule has been disregarded in nearly every commonwealth where it is has ever obtained.

In a note at page 466, Vol. 16, Am. & Eng. Enc., it is said: "The doctrine that a mere scintilla of evidence is sufficient to send the case to the jury is now virtually discarded in American courts, and wholly so in the English courts." When my attention was first brought to this statement, I was a little suprised at its sweeping character. In order to verify it, I wrote to the chief justice of every state in the Union, putting to him these questions: "Has the scintilla rule ever obtained in your state? If so, does it still obtain? If it does not, about when was it abolished; and was it abolished by legislative enactment, or by judicial decision?" Owing to the lateness of the date at which I wrote these letters, I have heard only from about half of the chief justices; but the letters which I have received nearly all come from the chief justices of the states which we are pleased to denominate the strong states judicially, and I find that, so far as I have heard, there is but one state besides Ohio which clings to the scintilla rule, and that is North Carolina. I find that there is but one state, (and I have forgotten which one it is), in which the matter has been dealt with by legislative enactment. In all the other states where the rule has ever obtained, it has been abrogated by judicial decision.

An examination of the holdings of the various courts on the subject seems to fully bear out the statement which I have quoted from the American and English Encyclopædia, and some of the courts are very pronounced in their expressions about the rule. For instance, Justice Miller, in *Pleasants* v. *Fant*, 22 Wall., 116, says:

"It is the duty of a court, in its relation to the jury, to protect parties from unjust verdicts arising from ignorance of the rules of law and of evidence, from impulse of passion or prejudice, or from any other violation of his lawful rights in the conduct of a trial.

"In the discharge of his duty it is the province of the court, either before or after the verdict, to decide whether the plaintiff has given evidence sufficient to support or justify a verdict in his favor. Not whether on all the evidence the preponderating weight is in his favor; that is the business of the jury; but conceding to all the evidence offered the greatest probative force which according to the law of evidence it is fairly entitled to, is it sufficient to justify a verdict? If it does not, then it is the duty of the court after a verdict to set it aside and grant a new trial. Must the court go through the idle ceremony in such a case of submitting to the jury the testimony on which plaintiff relies, when it is clear to the judicial mind that if the jury should find a verdict in favor of plaintiff that verdict would be set aside and a new trial had? Such a proposition is absurd, and accordingly we hold the true principle to be, that if the court is satisfied that, conceding all the inferences which the jury could justifiably draw from the testimony, the evidence is insufficient to warrant a verdict for the plaintiff, the court should say so to the jury."

I know of no recent text-writer who supports the rule. I find in Cooley on Torts, second edition, page 804, this: "If the case is such that reasonable men, unaffected by bias or prejudice, would be agreed concerning the presence or absence of due care, the judge would be quite justified in saying that the law deduced the conclusion accordingly. If the facts are not ambiguous, and there is no room for two honest and apparently reasonable conclusions, then the judge should not be compelled to submit the question to the jury as one in dispute. On the contrary, he should say to them, 'In the judgment of the law this conduct was negligent,' or as the case might be, 'There is nothing in the evidence here which tends to show a want of due care.' In either case he draws the conclusion of negligence or the want of it as one of law."

The second reason why I think this rule should be abrogated is that it rests upon no sound basis. The court may always be required to pass upon the legal sufficiency of evidence after the verdict, upon the motion for a new trial. Upon what ground can it be argued that the court should not perform that duty before verdict? What advantage is it to a party to have a verdict rendered in his favor upon evidence so slight that no right-minded judge could or would permit the verdict to stand? Is it not better for both parties that the controversy end before verdict in a case where it is clear to a candid judicial mind that no recovery can be had or sustained upon the evidence?

A third reason why I favor the abrogation of this rule is that its application is pernicious in practical results. What judge or lawyer, presiding or practicing where the rule obtains, has not had experience or observation, or both, of a continuous see-saw between the judge and the jury, the latter rendering and the

former setting aside verdicts? I had, a few years ago, a very important case, which I was compelled to try five times, the jury rendering verdicts each time, excepting once when the common pleas judge had the courage of his convictions and directed the verdict. The circuit court reversed him, because it discovered a scintilla of evidence. But the same circuit court set aside the verdict after one trial because of this same mere scintilla. I was compelled to try that case five times before I got to the end of the controversy because of this scintilla rule.

Under the application of the scintilla rule, it not infrequently occurs that a party is compelled first or last to buy peace, in a case which has no merit, and which a court, properly administering the law, would never permit to pass into judgment against him. It is an expensive rule. We all know that no case can be tried in the court of common pleas, if the trial lasts only one day, at an expense of less than one hundred dollars. When I say that, I mean to include the jury per diem, the per diem and average mileage of witnesses, if there are only three on a side, and twenty-five dollars a day for each of two lawyers. You cannot try a case for less than one hundred dollars. Very often, as we know, there are many more witnesses, and more than two lawyers; the case runs into many days, and it does not take very long for the expense of the lawsuit to run into four figures. If you have to try the case over and over again, as often happens, it will run into four figures of a pretty good size; whereas, it might be ended at the close of the first controversy if it were not for this scintilla rule.

A fourth reason, as I view it, is: That the abrogation of the rule cannot do any one injustice. In Ohio, the plaintiff, or the party having the affirmative of the

issue, can always have the sufficiency of his evidence passed upon by the circuit court, and a new trial awarded if that court should be of the opinion that the evidence would sustain the verdict. Such a proceeding would have reason for its foundation and justice for its results; whereas, the scintilla rule is liable at any time to lead to a practical absurdity. For example: The trial judge directs a verdict for the defendant, there being only a scintilla of evidence tending to support the plaintiff's claim. The circuit court, on error, reverses the proceedings because it has discovered only a scintilla. A new trial is had, resulting in a verdict and judgment for the plaintiff. The circuit court again reverses the proceedings, because it has again discovered only a scintilla. Take another example: The trial results in a verdict and judgment for the plaintiff. The case goes to the circuit court on error, and the judgment is reversed because it is not sustained by sufficient evidence. A new trial is had in which the same evidence is given and the trial judge directs a verdict and enters judgment for the defendant. The circuit court again reverses the judgment because there is some evidence tending to support the plaintiff's claim, and say the case ought to have gone to the jury; whereas, they reversed it before when it did go to the jury, because the same evidence was not sufficient to sustain it.

The result of adhering to the scintilla rule is to set at defiance the inalienable right of litigants to have not only a speedy trial but a speedy termination of the controversy. It also adds greatly, as I have already said, to the expense of litigation. So I contend that, upon every consideration of expediency, of reason and justice, this rule ought to be abrogated. I have said that I am in doubt whether the report of the committee

ought to be adopted in its present form. The report recommends that the rule be abrogated by legislative enactment. I do not believe it is a safe thing to do. Suppose you go before the legislature with a proposition of that kind, and the legislature refuses to abolish the rule. The Supreme Court will then say, the legislature has at least negatively spoken upon the subject, and we do not feel at liberty to abrogate the rule by judicial decision, as we might have done had it not been for that expression on the part of the legislature. Suppose, on the other hand, you go before the legislature and get the bill passed. It is very easy for someone, for a particular purpose, to go before the legislature again and get it repealed, before you are aware of it, and then, the legislature having spoken positively on the subject, the Supreme Court will say, with greater force, we cannot abrogate this rule with an expression of the legislature that it ought not to be abolished.

A few years ago I went to the Supreme Court in the case of which I have spoken, and, in my argument, directly attacked the scintilla rule. The court refused to abrogate the rule, but two of the judges dissented, holding that it ought to be abrogated. I do not pretend to speak with knowledge, but I think, from what I have learned incidentally, that the court, as a whole, is more favorably inclined now to an abrogation of the rule than it was then; and it seems to me that the better way is for us to labor with the court until we can get at least one other member to see the error of his ways and bring him from darkness into light upon this subject. Then we will have the rule abrogated, if a case comes up in the proper form, and, when it is abrogated by the court, it will be abrogated for all time to come.

So, I move you, Mr. President, as a substitute for the proposition recommended by the committee, that

it is the sense of this Association that the scintilla rule ought to be abrogated. I do this because I have faith to believe that the Supreme Court will receive and give favorable consideration to any proposition emanating from this Assembly which shall be passed after sufficient consideration, and by a reasonably strong vote.

I hope that this Assembly may express its approval in the form which I have suggested, of this clause in the report of the Committee.

Mr. S. M. Johnson, Cincinnati: I have listened with a great deal of pleasure to the remarks of Mr. Troup, but as a member of the Committee, I hope his amendment will not be adopted. The suggestion,—and it is a mere suggestion,—appears at No. 1 of the recommendations of the Committee. If this suggestion were embodied in a statute, it might read this way: "When all the evidence on any issue is, in the opinion of the court, insufficient to sustain a verdict thereon in favor of the party on whom the burden of proof rests, a verdict shall be directed against said party on said issue."

Ohio has always been in the van of legal reform. It has been first and foremost always; but it seems to cling, with a devotion worthy of a better cause, to a rule long since abandoned and condemned by the English courts, the Supreme Court of the United States, and the lesser federal tribunals. In those tribunals, at every trial there is always a preliminary question for the judge, not whether there is literally no evidence, but whether there is *any*, upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed. If there is a bare scintilla,—a mere surmise,—if there is the slightest tendency in any part of the evidence to support the plaintiff's case, it must be sub-

mitted to the jury, although the court is fully advised in advance that a verdict cannot stand upon such evidence.

The Supreme Court of the United States, in the extract read by my friend, announced the principle which your Committee desire to concretely illustrate by a statute. Now, it may be an argument of the timid that you shall not appeal to the legislature for redress; that you dare not in any way impinge upon the constitutional right of an Ohio jury to find for some one irrespective of the law and the facts. I have had very little experience before the legislature, since a member of my family, after nine days' service in that distinguished body, was sent adrift into a cold world minus his office and his mileage. But there are some people who are not so easily frightened; and I think, with the might of right, and public opinion behind us, we can accomplish something even before the legislature.

There is another thought that occurs to me: Before the legislature meets, which is two years hence, our Supreme Court may, some early morning, no longer see those scintillations or unsteady flashes, but in the clear light of the morning star of progress, abandon an obsolete precedent, and adopt the new rule which is founded in reason and in right.

I think the suggestion of the Committee ought to stand as it is, and we ought to attack the legislature and also try to persuade the court.

The President: I hear no second to Mr. Troup's motion.

The motion was seconded.

Mr. Albert Douglas, Chillicothe: In order to bring the matter properly before the Association, I move that all after the word "abolished" in the first line be stricken out, leaving it: "That the scintilla rule be

abolished." I do this because I very heartily concur in the opinion expressed by Mr. Troup, that an appeal to the legislature in this regard would probably be futile, and this, I believe, would fix the rule in Ohio more firmly upon us than it is already. I believe the Supreme Court will in the course of time, and not a very long time, abolish the rule for us.

Mr. Troup: There is very little difference between myself and Mr. Douglas. It is merely the difference of a word, and I think the word "abandoned" is a better word than "abolished," and I will ask him to consent to use the word "abandoned" instead of "abolished."

Mr. Douglas: I have no objection to that.

The President: Then Mr. Douglas' motion is to strike out all after the word "abolished" in the report of the Committee, and to substitute "abandoned" for "abolished."

Mr. John L. Locke, Cambridge: Mr. President, I hesitate a little to assume to be able to say anything to the State Bar Association (being one of the younger members of the bar), that is worth your attention, but if you will indulge me for a moment or two, I wish to express myself as to the first paragraph of the report.

I am not a member of the legislature; I have had no members of my family who have been badly treated by that body, as has my brother who preceded me, and yet, without any hope of reward from that numerous body of citizens of this state, I am in favor of abolishing the scintilla rule, but, with all due deference to Mr. Troup, I believe it should be abolished by statute. I do not entertain the opinion that the Bar Association need fear to go into Governor Jones' distinguished body, or even into the lower house, with its recommendation.

The reason for the repeal by statute comes, as I apprehend, from this fact: That however much judges and lawyers may regard the scintilla rule as being wrong in principle and pernicious in its application, it has been for more than fifty years the established rule of practice in this state. It has been the rule applied to the rights of the people. I think the Committee does well to put it first in its report, because it is first in importance; and I believe that the people of the state, speaking through the members of the legislature of either branch, ought to have the opportunity of expressing themselves as against so fixed and so established a rule of our practice. I believe it is safe for the courts even of last resort in this state, or in any other commonwealth, to keep as close to the desires of the people as can justly be done.

Now this is not intended to be offered for buncombe or for populistic effect, and it may not be well expressed, and yet the theory is that the courts do well to know what the people want, not always with a view to giving the people what they want, but with a view to discovering whether the voice of the majority is not after all the voice of right. So I believe that, while the scintilla rule should be abolished, it is better to let the legislature take it, than it would be for the Supreme Court to undertake to abolish it, without first appealing to the legislature to do so by statute.

I had thought to say something about the reasons why the rule should be abolished. Mr. Troup, with excellant research, has given the position of the Supreme Courts of other states. The Federal decisions, and particularly those which we have had in two instances from Justice Clifford, seem to leave no uncertain light shining from that court; but so far as the Ohio rule is concerned, standing as it seems very

much alone, the scintilla rule has been the rule of practice for more than fifty years in this state, and it has been established in this state by no mean talent whatever.

I was interested, as doubtless some of you were, in taking the line of reports from Wright down to the 45th, which was as late as I looked for any case upon the subject, and, without alarming you at this paper, because I do not intend to read it, we find back in Wright's Reports such men out of the Western Reserve as Wade, Giddings and Peter Hitchcock of Counsel; out of the same locality, in a case in 11 O. S., were Tod and Huffman, and I believe it is the same respected Judge Huffman whom I used to know at Youngstown, who died not many years ago.

A Member: He is living.

Mr. Locke: He is living? Well, I am glad he is still living. In the well known case of *Ellis* v. *The Insurance Company*, from Hamilton county, were such legal giants as Timothy Walker, Fox and Pendleton, Worthington and Mathews. In a case in 24 O. S., coming nearer to our own time, we find such Judges as Day, Chief Justice, White, McIlvaine, Welch and Stone all concurring. Now, I do not undertake to say that they were concurring because they regarded it right as a matter of principle, or whether they were concurring because the scintilla rule was an established law of the state, but that they were concurring is significant. In the later cases, it came to be one of some disagreement, indicating a different tendency. As I have said, there is no question for dispute about it when we get into the other states and the Federal Courts, where the rule is directly opposed to the Ohio authorities.

I shall not take more time on this branch of the report. I only wanted to voice myself as being in

accord with this first section of this paragraph of the report of the Committee.

When we come to the other section of this same paragraph, which accords to the trial judge the right to direct a verdict, it is to my mind, not logically connected with the first suggestion of the paragraph, and upon that I do not agree with the Committee. I believe the submission of the two propositions as though they belonged together is unfortunate for the unprejudiced consideration of the first clause which I have been discussing. They are very important rights, both of them. I think the second section,—without undertaking to discuss that now, because no attention has been called to it,—is too radical. It too completely usurps the province of the jury. It seems to forget that the chief end is not to clear up the docket, but to do justice between litigants. We may be in favor of the abandonment of the scintilla rule and its abolition by statute, and yet be far from agreeing to the second part of this section.

W. H. A. Read, Toledo: Mr. Chairman, I am opposed to the amendment. I am in favor of the recommendation of the Committee. Mr. Chairman, I do not belong to that class of citizens who think that no good can come out of a legislative body—a representative body; that they are always selected for the purpose of doing that which should not be done. I believe in their honesty. For over fifty years the legal talent of Ohio, for twice the time that I have been a member of the bar, have been engaged in coaxing, in arguing, in trying to persuade the courts of Ohio to abrogate this rule, without success. The only argument that is presented by the mover of the amendment why we should not proceed to the legislature, that has weight, it seems to me is that somebody, after they have performed their

duty at the request and urging of the Bar Association of the state, somebody may clandestinely persuade them to abrogate the rule and abolish the statute that they enact at our request. That is the only argument, I say, that seems to be presented. It seems to me it is directly refuted by the assertion of the fact that this rule, where it has been abrogated by a court or by the legislature, has never been restored in a single state in the United States. Where it has once gone, it has gone forever, or, at least, to the present time.

Another thing: Shall we succeed in the future any better than you older men and your predecessors have in persuading, or, are you going now with this amendment and give them two years in the shape of a threat? Is this amendment a threat? You have two years, you say to members of the Supreme Court, and if you do not fix it in two years we will set the legislature after you, and have them fix it. It is not in that shape. Let us go to the legislature and have the law, and then the Supreme Court will have to interpret the law when we get it.

Mr. O. S. Brumback, Toledo, O.: I may be on the unpopular side of this question in this meeting, but gentlemen, I say there are two sides, and two great sides, to this proposed change in our practice and the law of Ohio. When they tell me that for fifty years the present rule has been an established principle in the state of Ohio, put into practice by the greatest men that the state has produced, then I say we should consider well an innovation such as that proposed. The difficulty, it seems to me, with most lawyers who discuss this question, is that they fail to consider what the so-called scintilla rule really is in Ohio. Now, I deny the proposition announced here, that the weight of the decisions of the Supreme Court of Ohio establish the prop-

osition that any case is entitled to go to the jury on a mere surmise—a mere grain of testimony, or anything of that kind. If that is the meaning of the so-called Ohio scintilla rule, it ought to be abolished. But, that is not the meaning of the scintilla rule as laid down by the Supreme Court of this state. It has no such meaning as that; and it is entirely wrong in talking about the rule in Ohio, to call it "the scintilla rule." The Ohio rule is not a scintilla rule by any means. We have the same rule in Ohio that is common to most of the states in this matter.

The language of the Supreme Court, as now interpreted by almost every trial court in this state is, that it does not mean that on a mere surmise in favor of the plaintiff, the case must go to the jury. On the contrary, it is usual and customary, when there is that kind of a case, for the trial court to direct the verdict.

I will tell you what the Supreme Court does say about this scintilla rule in Ohio, as decided in several cases. In the case of *Stockstill* v. *D. & M. R. R. Co.*, 24 O. S., 83, recognized and approved in various cases as late as 50 O. S., 139, the court lay down this as the doctrine: "If the evidence tends, in any degree, to prove all the facts which it is incumbent on the plaintiff to establish in order to maintain his action, he has a right to have the weight and sufficiency of the evidence passed upon by the jury, and it is error for the court to grant the motion, and render judgment against him."

"If the evidence tends, in any degree, to prove all the facts." When there is evidence before the court, therefore, of all the facts which it is necessary for the plaintiff to prove to make his case, the case must go to the jury. And why is that not just and salutary? Why should it not be the rule?

It is the rule in most of the states, as laid down by the courts of last resort, and substantially the rule of the United States Courts. In *Railroad Co.* v. *Cox*, 145 U. S., 593, 606, the Supreme Court of the United States say the right of the trial court to direct a verdict exists only when—"no recovery could be had upon any view which could be properly taken of the facts the evidence tended to establish." In *Texas & Pacific Ry. Co.* v. *Gentry*, 163 U. S., 353, the same court say—"it is only where the facts are such that all reasonable men must draw the same conclusions from them" that the question is one of law for the court. In the late case of *Travellers Ins. Co.* v. *Randolph*, 24 C. C. A., 305, Mr. Justice Harlan announces: "A peremptory instruction should not be given to a jury, unless upon a survey of the whole evidence, and giving effect to every inference to be fairly or reasonably drawn from it, the case is palpably for the party asking the instruction." The same rule prevails in the English courts: "Where there is conflicting evidence on a question of fact, whatever may be the opinion of the judge who tried the cause, as to the value of the evidence, he must leave the consideration of it for the decision of the jury." *Railway Co.* v. *Slattery*, 3 App. Cases, 1155.

I want every man present to understand the proposition advanced here: It is for the state of Ohio to say, either by statute, or by the Supreme Court, that the trial judge, before he allows the case to go to the jury, is first to determine whether at the time of reviewing the trial on a motion for a new trial, he would set the verdict aside. Under our code, the court—on a motion for a new trial, has the power to consider the weight of the testimony and to weigh the testimony. It therefore follows, that under this pro-

posed amendment, the court in the first place is to weigh the testimony, and if he thinks, as a jury of one, there is a sufficient preponderance of evidence, or drift of the evidence, rather, is against one side or the other, he is to determine the case by directing the verdict.

Gentlemen, the minute that rule is established in Ohio, the right to a jury trial is gone forever. It is pretty common in this day and age of the world for certain interests to advocate changes in fundamental principles which come down to us from our forefathers, that profit may come to the few therefrom. You can kill a man with a bludgeon, or you can secretly poison him to death by slow degrees. In my judgment, the proposition here is, not to strike down the right to a jury trial by open and direct attack, but to poison it to death by insidious means.

We are all fallible in this world, and I contend that judges are no more infallible than members of the bar. It is very natural for a man sitting on the bench, and wielding authority in the flush of his power, to forget that there are any restrictions on his action. I have seen cases where, under the exercise of power, a judge has even become despotic. When you place it within the power of a judge to say whether a case shall go to the jury, without any restriction upon his authority to act on the evidence, a party plaintiff who seeks to right a wrong must win the court first, and then procure twelve men, sitting as a jury, to also decide in his favor. A party wronged must, therefore, under such practice prevail with thirteen men unanimously before he can recover a verdict and obtain his rights. In other words, by such practice, instead of facilitating justice and the righting of wrongs, you are obstructing the administration of justice, and encouraging the

wrongdoer,—allowing him to avoid the consequences of his wrongdoing.

I know of one judge in this state, who decided that the Supreme Court had abolished what he called "the scintilla rule." He ruled that in Ohio the scintilla rule was not in effect, and he had a right to weigh the evidence to determine whether to direct a verdict. The case went to the Supreme Court and was there affirmed, without report, doubtless on other grounds. On the strength of this decision he held that there were no restrictions on the right of the judge to weigh the evidence.

I say, Mr. President, that this proposition, to grant trial courts so much broader and greater powers than they now have, is to usurp the right of jury trial. It is to say to the trial court, you can do practically as you please with the rights of suitors before you. If you have ever thought about it, you will realize that every common pleas judge in the state already wields more power over the property and rights of the people within his jurisdiction than any potentate in Europe exercises. He has the power, almost, to make or break a litigant before him if he sees fit. To widen this power, and to give him a right to say whether a man shall or shall not go to a jury, is to say that the great Magna Charta right of jury trial is "a glittering generality without any real substance."

Again, Mr. President, I do not believe that the legislature has the power to pass any such a law as is proposed here. The right to a jury trial, of course, is a constitutional right granted by the constitution. When the Supreme Court has defined that right, the legislature cannot take away any part of the right. Manifestly so. Therefore, since the Supreme Court has specified the meaning and extent of the right of a

jury trial, the legislature cannot, in my judgment, limit it by any statute. The minute you undertake to restrict the right of jury trial by statute, that minute you are intrenching on the constitution, both of the state of Ohio and of the United States. And even if our state Supreme Court should fall into any such error, as to allow such a curtailment of the right to a jury trial, I doubt not the Supreme Court of the United States would right the wrong.

I say justice is being done in the state of Ohio to-day, and why any change? Is it not for the benefit of certain corporate interests that are not satisfied to have justice meted out to them in the same manner as the ordinary citizen? Indeed, the proposition is to do the very thing opposed by the able paper read this morning by the Hon. Franklin J. Dickman, viz: to intrench on the unwritten law by unyielding written statutes which must prevail according to the very letter and meaning of the language itself.

Justice is being done to-day in Ohio, under the existing practice, as fully as it can ever be accomplished. It may be true, and doubtless is true, that when some company or corporation negligently maims or kills somebody they have to pay for it. But, gentlemen, they ought to pay for it if they are to blame, and I oppose and contest any proposition which will vote away or limit the rights of the common people of this state to appeal to the courts and have the facts connected with their wrongs determined by twelve of their fellow citizens. To say that they shall have that right no longer, and to say that one man sitting in a position of authority may take away that right, is to say that the entire system of English law is fundamentally wrong, and that we have struck upon new and modern ideas

which are better than those we have always believed to be correct and true. Away with such a thought.

Therefore, Mr. President, I say that this proposition is radically, entirely, fearfully, and eternally wrong, and I hope this Association will not go before the people of this state to say that the right of a jury trial is to be denied by some one man saying, that in his opinion, there is no sufficient case made out. The Supreme Court was right when it said if the plaintiff has made out his case by evidence tending to establish every proposition necessary to recover, the jury's jurisdiction comes into play, and he is entitled to its award. There is no midway course. It is either that, or else the whole case must be subject to the discretion of the judge. Nor is it a question of a parsimonious economy. Justice is not too dear at any price. If, as argued by the gentlemen, it is a question of expense, why empanel a jury at all? When the court has decided on the right of plaintiff to recover, why obstruct his recovery by any submission to a jury at all and require their unanimous approval? Indeed, all the expense has been substantially incurred when the evidence is closed. Why become so very niggardly at the very end of the trial? Is there not a deeper and more significant meaning to this attack upon our court practice? And is it not that the guilty may escape and the wrongdoer go scot free? It certainly looks so.

I trust, therefore, that not only will this proposition to amend the statutes of the state be lost, but also the pretentious appeal to have our Supreme Court change it. When it does so, the confidence of the people in its integrity will be gone, and the men engaged in the work will not be forgotten by those whose rights they have assailed.

Mr. R. D. Marshall, Dayton: It is one of the established theories, if not a maxim of the law, that the courts will not do a foolish thing; and we should not proceed and take the time of the court in furtherance of that which, in the end, will result in simply vain proceedings.

I am in favor of the jury, and jury trials; but I am not in favor of either the jury, the court, or the lawyers continuing in the trial of a case, when the plaintiff has rested, and the court knows and feels that, if a verdict were returned for the plaintiff, it would be his duty to set it aside; and if that is so, to require this kind of a thing to be done, would be requiring a vain and foolish thing.

I am inclined to the belief that it might be well to let the "scintilla rule" die in the same branch of the government in which it was brought into life. The Supreme Court are the parents of this "scintilla rule;" and if it is to die and be buried, I would be willing that its parents and its immediate relations might take charge of it, and give it a decent and respectable burial. (Applause.) And then I would suggest that on its tombstone there be inscribed an epitaph something like this:

Here lies an old friend,
Whom we tried to amend
But failed in our efforts.
We have succeeded at last,
We have buried the past,
And now we feel better.

Now, I think my friend over there, when he speaks of wiping out the jury system, is mistaken. I believe the jury system still remains in the United States Courts. I do not think there is any question about that. There are people who think the administration

of justice would be subserved if the jury system were wiped out. I do not concur in that belief. I am in favor of retaining it. If there were sufficient testimony introduced that, if a verdict were found in favor of the plantiff, it would not be the duty of the court, under the law, as it now is, to set it aside, but have the jury go on and determine the case, then the case would go to the jury. It does not follow that even though it may be simply a question that one man might look upon it one way and another another way; that does not bring it so that the court, under the rule as it would then exist, would have any right to determine it, but the jury must determine it, and this would be true even though the court would not have reached the same conclusion. Simply because the court would have made a different finding would not be a sufficient reason to set aside the verdict; and that leaves the jury system stand, and we need not get up any funeral or any burial of the jury system, even though this rule be wiped out. We can all have the same respect for it. But, do let us reach a point in the progress of law where we may stop doing a vain and foolish thing. That is my only reason for asking that it be abolished. I am inclined to believe that the Supreme Court, which admits that it is not infallible, and have changed when they have found that they have committed errors in the past, and, like the wise man, have corrected them, have proceeded on the theory that men change, but devils don't, and therefore they do change, and have changed, and will change. I have no sort of reflection to make upon the Supreme Court. Justice has been administered and all that sort of thing, and again and again the time has been taken of the courts in determining these matters, where the "scintilla rule" has prevented the court from doing that which

it felt to be its duty. We have acted upon the principle of the constitution of the state of Indiana, which provides that, in criminal cases, the jury is the judge of the law and the facts, and yet it requires the judge to charge the law; but it provides that the judge shall say to the jury some place in the charge that, notwithstanding what the judge has said in his charge, the jury are the judges of the law and the facts; tell them that that is the law, and yet that they need not pay any attention to it. In the state of Indiana, which has some of the best lawyers in the United States, the constitution provides that any man of good moral character can be admitted to the bar even though he has never studied law. It therefore has more constitutional lawyers than any State in the Union.

Judge Pike: It is 1:00 o'clock. I move that we take a recess and that the subject of this discussion be deferred until this afternoon session.

Judge Johnson, of Mahoning: Before that motion is put, I desire to offer another, and that is, that a vote of thanks be tendered to Judge Dickman for the very effective and able address delivered by him this morning.

The motion was seconded, and adopted, unanimously.

Whereupon the Association took a recess until 2:30 P. M.

SECOND DAY—AFTERNOON SESSION.

The President: Judge Owen not being present, the regular order for the afternoon, after his address, is any unfinished business of the previous day, and then discussion on reports of committees. I take it then that the proper order is to go on with the discus-

sion of the report in which we were engaged when we took a recess. Are there any further remarks?

Judge John David Jones, Newark: Mr. President, if this were a political convention, I would not feel like saying anything. If the opinion of this Association were of no more value upon any question than the resolution of a political convention, it would hardly matter what action we took upon this subject.

After some reflection, I am not able to agree to the proposition now under discussion; for, it seems to me that it means, in its ultimate effect, the abolition of the jury system. Now, that is no cause that there should be any bating of breath, I admit. If the jury system is not an expediency, it ought to be abolished. But, if it is, it seems to me that it ought to have its full force and effect in this state, as an instrument for obtaining and accomplishing justice in the courts of the State. Now, of course, I do not intend to make any extensive remarks in favor of the jury system. I do not expect to talk about the paladium business, or any thing of the kind, although something on that subject will not be out of the way; for, briefly, it is true now, that eternal vigilance is the price of liberty; and it is still true that we can recline upon our backs so supinely as to be bound hand and foot, and it does not follow that, because a people are free, that they will remain free. So much for that. But, take the jury, now, as a medium of transacting the business of courts and arriving at what is just as to the facts, compared with the trial by a judge. I undertake to say, taken generally, criminally and civilly—that it is better than the judgment of a judge. I am of opinion that the jury system in this country is a public institution that has been established in accord with our institutions; and can not be departed from so long as we adhere to the

proposition that the people shall rule in this country.

Now, Mr. President, the difficulty probably about judges taking cases from the jury, and reversing or setting aside the verdicts of juries, the reason why it differs in the courts of Ohio from what it is in the United States courts, is that the judiciary is elected in Ohio. That is one reason. Now, we have adopted it in Ohio, and I think it has been found satisfactory. But, the question is, the jury having been established and guaranteed by the Constitution of Ohio, shall we, if we submit a matter to the jury, allow them to decide it, or shall we say that, in certain cases, although we allow evidence to go to the jury in certain cases, they shall not decide upon it? And if so, why? Because it is said that some judge has decided that, although the evidence is of sufficient weight, or it is relevant enough to go to the jury, although that is the fact, yet it is not of sufficient importance for them to pass upon. And this question involves the consideration that a judge has the right to withdraw a case from the jury if he should in his wisdom not believe some witness that has testified. Are we, as a Bar Association of Ohio, expected to endorse a proposition of that kind when the Constitution of the state gives a trial by jury?

The proposition now under consideration is whether the scintilla rule shall be abandoned, and no other rule put in its place. I do not think this amendment ought to carry, because we would be without a rule if we carried the amendment and adopted the resolution.

It seems to me that either one of two things should happen. Either the scintilla rule, as the philosophical result of trial by jury, should be adhered to; or the jury system abolished. I think it might be partly adhered to, and partly abolished. That is, that certain actions, as on contracts, should be tried by the

court, and certain other actions, of which this much talked of damage business is one, and criminal matters, ought always to be tried by the jury; and the people who are engaged in them ought to take the consequences. For, what does a judge know about damages, I would like to understand. I would like to know how he can tell what a man's life is worth. And I would like to know how a jury can tell. But, there are twelve of them, and they do the best they can.

Now, upon this question, as Mr. Brumback says, there is no middle ground; and the rule as announced by the Supreme Court of Ohio, and retained by it, is, in my judgment, the rule that ought always to be retained.

Mr. Albert Douglas, Chillicothe: With the consent of Mr. Troup, I move that the amendment shall read "abrogated," instead of "abolished." Perhaps the word "abolished" implies that it should be done by statute; and the word "abandoned" that it should be done by the action of the court by whom the rule was made. It seems to me that the proposition: That it is the sense of this Association that the scintilla rule should be abrogated, from whatever source that reform may come, would perhaps be more appropriate. And therefore, with the consent of Mr. Troup, the motion will be so made, "That the scintilla rule be abrogated."

Just one word, if I may be permitted. It ought not to be necessary to carry the least personality into this discussion, but, as something of that kind has been done, it might perhaps be sufficient for me to say that I have never tried a case as counsel for a railroad company in all my life. I have tried some against them, but I have never been so fortunate as to have a large railroad practice; and, therefore, I cannot be influenced by what has been attributed to some other

members of the Association. It is matter of surprise to me, the course of this discussion; and the question which the gentleman who has just taken his seat, among others, has sought to raise. How can it be possible that the abrogation of the scintilla rule in Ohio can be construed into an assault upon the jury system? It seems to me that the very suggestion would be ludicrous if it did not come from such distinguished men as have advanced it. What is the fact in Ohio today? Is the verdict of a jury a sacred thing upon which the courts may not lay their hands? Not at all. This resolution does not affect the settled rule that the determination of questions of fact shall be by a jury, and of questions of law by the judge. It does not essentially change the matter in issue before the court one particle, as it seems to me. What does it do? What is the course of events in the trial of a cause? The judge sits upon the bench, counsel at the table, and jury in the box, and questions of fact are tried to the court and jury. What is the result? The jury brings in a verdict against the defendant. The motion for a new trial is sustained. On what ground? That the verdict is manifestly against the weight of the evidence. No matter whether the judge has been a "railroad lawyer" or not, I believe that, as a rule, we have judges who are governed by the plain and ordinary rules, and the code itself provides that if the verdict is against the manifest weight of the evidence, it shall be set aside. The judge sets the verdict aside; it is tried over again, and the verdict is set aside, and so, for five times, as said by the gentleman before dinner, this thing goes on, and there is no chance for an appeal to the circuit court; but, if the judge may say there is no evidence what ever, or that the evidence in this case will not support the verdict, then counsel for the plaintiff may go to the

circuit court and have the case, so far, determined. It seems to me impossible, after any right consideration of this question, for any one to seriously apprehend any assault upon the jury system, or the right of trial by jury, which is guaranteed by the Constitution. It is just as much guaranteed, if the scintilla rule be abolished, as it is now. The judge has exactly the same right now as he would have then to say that the verdict is against the weight of the evidence; only now he has to wait until the whole case is tried before he can express that opinion, and save the expense; whereas, if the rule were abolished, he can say this when the evidence is in, and then his ruling be subject to review by the higher court.

It seems to me that we are here, not for the purpose of discussing generalities in reference to the jury system, or putting ourselves "on record" for any ulterior purpose; but simply to say, as lawyers and professional men, whether or not the administration of justice is not brought into disrepute by such absurdities as have been pointed out by the gentleman who sits at my left. (Mr. Troup.) A careful examination develops the fact that nearly all of the states of the Union have abandoned this rule, and that it has been superseded by a better practice. I cannot see then that it is an assault upon the safety and integrity of the jury system in Ohio, to insist that the judge be permitted to say, when the evidence for the plaintiff is in: "I cannot conscientiously permit a verdict upon this evidence."

Judge Gilbert D. Munson, Zanesville: As a member of the Committee, I move that this whole subject be postponed to a meeting of this Association one year hence. I do that that the members may have further time to consider and determine what are the

real issues involved, and because the legislature will not meet next winter, but a year from next winter, which will give ample time for the consideration of the subject, which appears by this discussion to be, in the minds of the Association, of very great importance.

Seconded, and carried.

The President: The Secretary will now read the second recommendation.

The Secretary read the second recommendation as follows:

"That it be provided by statute that the trial judge or judges shall, when satisfied that allegations or denials are made in pleadings without the expectation of maintaining them upon the trial, assess a penalty of double the amount of the costs made in consequence of such allegations or denials."

Judge Gilbert D. Munson, Zanesville: Mr. President, I am asked to say a word in favor of this recommendation. It recognizes an evil which may be, in part at least, corrected. Sweeping denials are to be deprecated where they do not make or tend to make the real issue of fact which is to determine the merits of the case. We are taught by all rules of pleading to get at an honest decision of the case upon its merits, and those things which are really unimportant to the main issues in the case ought to be eliminated in some way. Taxing double the costs made by the party who contests, indifferent to honesty and good faith in the contest, by a general sweeping denial, is one way. Whether the provision is drastic enough to meet the requirements of the case, I do not pretend to say; but that something ought to be done in the line of common honesty in pleading, seems to me apparent to every lawyer who has had experience in the trial of cases. Upon this subject, those who are accustomed

to defend corporations, or, bring cases for corporation, will not differ; for illustration: The plaintiff, a national bank, is met by a general denial that it is such corporation as a national bank. The attorney for the bank must then have evidence to sustain the allegation that it is. He must be put to inconvenience and expense perhaps to prove his client is a national bank, when it is apparent on the face of the pleadings that there is no real contest upon that point. Take another case, that of a railroad company which is sued, and denies its consolidation with another railroad, although such fact is indisputable. I have known that to be done in the case of P., C., C. & St. L. Railroad. In such case the plaintiff would be put to considerable expense and inconvenience to prove what everybody knows to be the truth, that the roads were consolidated as alleged in plaintiff's petition. Instances might be given in illustration without end almost. Some I have in mind are ludicrous in the extreme. I knew an attorney for a railroad—the P., C. & St. L. Railroad—who denied, in a sweeping denial, in a case for the killing of stock, that the P., C. & St. L. Railroad ran through Muskingum county. Another case that I have in mind was a partition suit. The son denied by one of those sweeping denials, that his father and mother were married. (Laughter.) But things equally absurd you will know of and recall when you come to consider the question and reflect upon this proposed measure. I know of a case where a man brought suit against a municipality to enjoin a suit for the collection of a tax, on the ground of over assessment. He was the owner of a number of city lots, and there was no question whatever of his title and absolute ownership, and yet the denial put in issue the ownership of those lots—his title to them, compelling the production of a pile of records, at some

considerable expense, and a deal of trouble to prove his title. There was really no ground for dispute about that. If a trial judge may, in his discretion, tax costs where more witnesses are subpoenaed than are reasonably necessary to the trial of the facts in issue, discretion ought to be given him to tax costs where an issue is made which is not expected to reach the merits of the controversy, but for no reason in the world except to make expense and to annoy the other side. The trial judge ought to have the right to place costs against the party who has committed such misconduct as I take it such character of pleading really is.

I submit the matter to the members of the Association, whether it is not a grievance that ought to be remedied; and if not in the way here suggested, in some way to be suggested by the brethren of the bar.

(The motion to adopt the recommendation of the committee carried.)

The President: The Secretary will please read the third proposed amendment.

The Secretary read as follows:

"That the laws providing for the creation of corporations be so amended that before a corporation is authorized to transact any business, the entire amount of its authorized capital stock shall be subscribed and fully paid in, either in money or its equivalent, and that there shall be an official investigation to determine that all property used in payment for stock is taken by the corporation at not more than its market value."

Mr. W. H. A. Read, Toledo: Mr. Chairman: No more important question have we on this program; no question that as a body we are probably less prepared to discuss at the present time. It should be thought of seriously before we take that step. There are at

least three important questions involved in half a dozen lines. I move that it be postponed for another year.

Seconded.

Mr. J. F. Laning, Norwalk: This has been on the program for several years. It has been laid over from time to time, and it seems to me that this is as opportune a time as we can ever have.

(The motion to postpone consideration of the question until the next meeting did not prevail.)

The President: Are there any remarks upon the adoption of the report of the Committee?

Mr. Gustavus H. Wald, Cincinnati: Mr. President and Gentlemen: It is with a great deal of diffidence that I rise to speak upon this matter, and, upon being requested some days ago to speak upon it, I suggested that I preferred to be excused, for, only having about a week's time to investigate the subject, I came to the conclusion quite promptly and clearly in my mind that I did not know enough about the subject to speak to any advantage. I am not prepared at all to say what would be proper relief for the state of affairs now existing. And while I am clear as to that, I am equally clear that the remedy here proposed is inadequate and impracticable. There are several propositions involved in this resolution. The first is: "That the laws providing for the creation of corporations be so amended that before a corporation is authorized to transact any business, the entire amount of its authorized capital stock shall be subscribed and fully paid in." Then it speaks in two branches: "either in money or its equivalent. I am rather inclined to believe that corporations should be required to pay in cash their entire capital. When you come to reflect upon what a corporation really is, it is merely a method devised by lawyers, sanctioned by the state, through which an in-

dividual can multiply his own personality. By nature, he is a single human being. By means of the fiction of a corporation, five men can erect themselves into fifty beings, thereby multiplying their personality by ten. Now that is a privilege of the highest possible value. It is undertaking to do what the Creator himself did not do; and anybody who desires such a privilege should be prepared to pay handsomely for it; and I consider it but a small price that he be required to pay in the full amount of the capital stock which this person says he possesses, and which the state says to the world by its incorporation that this intangible person represents. Here we have a fictitious person, created by the state, with a capital stock of say, one hundred thousand dollars. As the law stands today, that fictitious person becomes ten times as fictitious by going out into the world with this lie that it has a capital stock of one hundred thousand dollars, when it has only paid ten thousand. I think to require it to pay in its capital stock is a cheap price to ask of it for the privilege conferred; but when you come to say that it shall be paid either in cash or its equivalent, you immediately get into trouble. Of course, as to some things, the equivalent of cash can be instantly and easily determined. As to others, who can determine? When it comes to issuing stock in payment of a patent right, for instance, even so great an invention as the telephone or the electric motor, who can tell when it is invented whether it is going to be successful; whether it is going to be the equivalent of five million dollars or fifty cents? As to the creation of a commission to determine that, it will become a matter of politics. Men can determine the value of tangible things, houses and lands and horses, and all the things that can be seen and felt. Take the case of a new motive power. If you had a

political commission to determine the amount of stock that a corporation might issue in return for the right to use a new electric motor, wouldn't the railroad companies own that commission in fifteen minutes? Suppose you take, for instance, acetylene gas. A company comes to our city for the purpose of introducing acetylene gas. If we had a commission to determine the value of the right to use acetylene gas in Cincinnati, and the amount of stock the corporation should issue as the equivalent of money, the local gas company would own that commission in less than an hour, and it would prove that no stock should be issued for it at all, but that the thing was a threat to the public welfare.

I have examined some of the various statistics on this subject. I find the greatest imaginable confusion. In many states, corporations are not required to pay in any part of their capital stock. In some, ten per cent. In New York the provision is that they must pay it all in, but it is not stated when. This seems a little curious. In Massachusetts, manufacturing corporations must pay in all of their capital stock, in money, before they begin operations; but as to the other corporations, the provision varies. In Maryland, in order to get over the diffculty of requiring the payment to be made in money or its equivalent, the statute provides that whenever the payment is made in anything else than money, the stock issued shall be stamped "issued for other than money." They put the brand mark of Cain upon it, and whoever buys it takes it *cum onere.*

Considering all this confusion in the different states, and remembering that this is not a question of law strictly, but rather a question of public policy, I would beg to renew the motion that has just been voted down, that this matter be laid over and referred to a

special committee, with instructions to examine the statutes of the several states, and report to the next meeting; but I attach to that a condition that I am not to go on the committee.

Mr. J. T. Brooks, Salem: I should be glad to know, from some member of the Committee reporting this proposed change, what evils are sought to be remedied, in order that we may proceed more intelligently to a discussion of the question now; or, in case the question shall be postponed to another year, that we may guide our thoughts in a certain direction on the subject. Will some member please speak of the evils that are aimed at by this proposed change?

Mr. J. F. Laning, Norwalk: I am not on the Committee, but I have some knowledge of it. This proposition came from Judge Bateman, of Cincinnati. It was a matter that he had very much at heart, and he expected to discuss it here. I have talked about it with him personally, and I know his idea was that corporations are getting credit by advertising a very large capital stock, and which they ought not to have; and for this reason he thought that this permission under the statute should be abolished. I have heard him speak on this subject in conversation, and his idea was that there were corporations in Ohio, who were advertising millions of dollars of capital stock, that practically had nothing.

Mr. Gustavus H. Wald, Cincinnati: There are sixteen printed pages on this subject which can be found in the report of the transactions of this Association for the year 1895. Judge Nash touched on the subject in the same sense in his presidential address last year.

Judge Munson, Zanesville: I suggest a word or two, being a member of the Committee It seems to

me that the evils to be remedied by this measure are so apparent and so well known, and that they have been so ably discussed in this hall, that it is hardly necessary to state them. It may be that my brother, Brooks, was not present when the Hon. Warner M. Bateman and Judge Van Deman, and other gentlemen, set out the evils which ought to be cured by this proposed legislation. Permitting corporations to pay in only ten per cent. and less on stock subscribed, was fully discussed and was recognized as one of the evils that ought to be remedied by some sort of legislation. So that I will not dwell upon that. I do not think it is necessary. The thing that appears to me necessary is to answer, if possible, the objection made by Mr. Wald, of Cincinnati. That may be a very serious objection to the proposed measure as it now stands; but our committee felt that a corporation which could not fix a market value upon property that it sought to be turned in as and for money, ought not to be permitted to give such property any value whatever. Whether it is a patent right, a franchise, or whatever it may be, if it is to go in lieu of money, it ought to have a market value, and that is the way the value of such property ought to be fixed, under all circumstances. In the trial of lawsuits to determine the value of property we get at its market value. If it has no market value, then so much the worse for the property; so I suggest in answer to Mr. Wald's objection, if the patent or franchise has no market value, it may be unfortunate for the proposed corporation and enterprise, but it cannot be helped; if the patent or franchise has no real market value neither should go in as payment for stock subscribed. This is the first measure that I have seen advocated that puts the matter of the organization of corporations absolutely on honest principle—payment of the entire capital stock

in full does it. Ten per cent., twenty-five per cent., fifty per cent., seventy-five per cent., or ninety-five per cent. does not answer the requirements of absolute honesty in their organizations. In order that we may stand fairly, and present this matter in the light of principle, we want to and do advocate payment in full.

Mr. J. T. Brooks, Salem: Mr. Chairman, I have only a few words to say. We are to assume from what has been said that the object of this amendment is to prevent the promoters of corporations from unjustly making a profit by or through means of an expanded capital stock. The persons who may become their victims are presumed to be either associate stockholders or the public. There are many serious questions raised in an inquiry or any proposed action of this kind. Our state derives a very large revenue from the license fee which it imposes upon those who create a corporation. If we make those conditions too burdensome by our legislation, corporations would be formed in other states rather than in Ohio, West Virginia, Michigan, Wisconsin, and other states, whose laws are liberal as to the formation of corporations, will get this revenue, to the exclusion of Ohio; and as this revenue amounts to many dollars in a year, there should be careful consideration given to this subject before we advise our legislators to take any particular action upon the subject.

The public permits corporations to exist because they believe they derive certain advantages from the existence of corporations; and it is perfectly right, whenever the public find that the promoters of corporations are abusing their power, or making an improper use of the franchises granted to them by the public, that they should correct those evils. But it is important that they have clearly before them the evils

which they wish to correct, and not strike in a general way so as either to drive the men who wish to form a corporation out of the state, or prevent them from exercising corporate powers or owning corporate property in the state of Ohio.

It has been suggested that some such evil was in the minds of the men who suggested this change in the law, and believing that this proposed change is wholly inadequate to accomplish their wish, I trespass upon your attention for a moment.

Let me read the first section of this proposed law: "That the laws providing for the creation of corporations be so amended that before a corporation is authorized to transact any business, the entire amount of its authorized capital stock shall be subscribed and fully paid in." That is the first point. Now, corporations without number are created which do not need their capital stock all paid in. That money, if paid in in the start, would lie idle and be unproductive. Not to transact any business until all the capital stock is subscribed and paid in, is an obstacle in the way of creating corporations, because it is impossible for a great many of them to make proper use of their capital in the start and before they do any business whatever. Take a manufacturing corporation; to transact any business means to buy material for a shop, to negotiate for machinery and for land. Now, we do not certainly intend that the people who wish to create a manufacturing corporation shall have every dollar paid in before they can negotiate for bricks, or land, or lumber, nor machinery. It seems to me that this is not exactly the thing we want. I apprehend that the principal trouble that grows out of the creation of corporations and their permission to exist, when they have subscribed or paid in but a small share of their capital

stock, is to be reached in a different way than that proposed here. In order to more fully protect the stockholders and the public, would it not be better to say that the capital stock shall all be paid in before any debts are contracted? I believe that the people who wish to create a corporation in Ohio and avail themselves of the powers they are given by the laws of Ohio for the creation and regulation of corporations, should be compelled to guarantee to the public, and for the protection of those stockholders who pay in, as against those who do not pay in, that, before any corporation shall be permitted to create a debt, it shall be required to have all its capital stock paid in.

I make no objection whatever to the clause which proposes to allow them to pay in cash or its equivalent; and I concur strongly in that feature which proposes to have some sort of an investigation to decide, judicially or officially as may be determined, that the cash has been paid in, or that the stock has been subscribed.

Now, I have never known an instance in which any member of the public has been victimized or subjected to loss because of the nominal capital of a corporation. If the capital stock is authorized at half a million dollars, and it is the intention to pay only one hundred thousand dollars in now, the state, notwithstanding, gets its revenue on the half a million. It is true that it is not a very difficult matter for a corporation properly organized, and the expense involved is not very great, to have its stock increased from time to time according to its necessities; and if the public should think that it would be better to hold the corporation to that mode of increasing the capital stock, as its necessities may arise, I should not object to it.

Now to speak more particularly of a class of corporations of which I have some knowledge, let me suggest a way in which the legislature of the state and the people of the state can protect stockholders and can protect the public who invest in the securities of corporations. If the object be in the first instance, as suggested by my friend, to save stockholders or the public, and they comprise pretty near everybody who is the subject of legislative care—there is another party who is entitled to protection; and in speaking of this branch of the case I expect to call in full play the electricity which was darting and flashing among us this morning, harmless, however, as it comes from a personal friend of mine, and reminds me of the struggles which we have at the bar-table continually. A subject which I would like to hear discussed: Is it worth while for the legislature of the state, or the people of the state, to try to aid capital, which has already been honestly and legally invested in corporations, against the assault, or competition, if you please, of other corporations? It is a novel principle for discussion before American audiences. It will be discussed largely in the future. When the extent of losses to individual investors in the stocks and bonds of railroad companies comes to be known, it will be found that the thought and the wishes of the people of the state may be safely and wisely directed toward giving some protection to those who have already invested their money in railroad securities, as against other people, who, on their own motion, wish to create corporations and make money out of the sale of their securities. Public opinion has not yet reached the stage of saying that the public has any concern in protecting the capital of capitalists invested in the stocks and bonds of railroad companies. But, as your object is to

protect one part of the public now, either associate stockholders or the public generally, isn't it just as wise to comprehend just as many people as you can, as to limit it to a few, to-wit: those who are going to become stockholders of a new corporation and the public who may become its creditors? To illustrate: A railroad company may be created under the general laws of the state by any number of persons, not less than five, who will fix the capital stock at any amount they please, subscribe ten per cent. and pay in cash ten per cent. of the amount subscribed. Following that, they may exercise the power of condemning real estate, of going through men's farms, homes and property, on their own judgment of the necessity for doing so, and take away your property or mine. We do not permit that in the laying out of the smallest sort of an alley, street or highway—no body of men, acting in their private capacity, can open an alley or a street through another man's property.

The promoters of a new railway may be all citizens of a foreign state, and have no interest whatever in the prosperity of Ohio. Five capitalists living in New York City, Boston or Philadelphia, conclude they will build a railroad in Ohio. They get five citizens of Ohio to subscribe a certain amount of stock and pay so much in, and thereupon those five men, with their agents, and representatives, may go crashing through the country, through farms, cities and homes, and wherever they please, upon their own judgment, as to the public necessity, or the propriety, or the reasonableness of such an enterprise. It has always seemed to me that there is the exercise of a large power that may be exercised against the interest of individual property owners, and certainly against the interest of a large

number of innocent people who may have invested their money in existing railroads.

Now, in order to head off enterprises of this kind, would it not be wise to provide some safe rule that, in the creation of railroad corporations, and before they are vested with the power to buy real estate, and especially to condemn it, somebody acting in a judicial capacity, or acting officially, may stand for the public and pass upon the question of the desirability or the public utility of that railroad; and if they, after a careful consideration of all the facts in the case, decide that the public does not need that railroad, say so, and put an end then and there to the intended operations of these men?

I am certain that these ideas are away in advance of what your thoughts have been up to this moment. The idea will occur to you in a moment that, if there be found a few citizens in the state of Ohio who think that another railroad is desirable, although there may be already one or more railroads between the proposed termini, that they should be permitted to have another one if they want it. The probabilities are that such will be the law in this state for many years to come; but the promoters of that kind of an enterprise are continually involving innocent men in stupendous disaster by being permitted to do as they are doing.

The principles involved in the proposed amendment would not reach the case in which the greatest number of people are involved and wherein the greatest losses are inflicted upon the public. For instance, you may pass a law and say that a railroad company's capital stock must be subscribed or paid in cash or its equivalent. What is there to shut off the promoters of railroads, as they have existed for the last fifteen years, from creating themselves a construction company on

the one hand, and a railroad company on the other, and then making a bargain with themselves that they will build a railroad from A to B and pay themselves as a construction company with bonds and stocks of the railroad company without limit? That is the game. It has been carried on in this state for fifteen or sixteen years. I do not know of a single enterprise of that kind that has not had to be foreclosed and sold out, and innocent investors all over the country involved in loss and often in ruin. And it goes on, and yet there is not a voice heard against it so far as I know. There are more investors in railroad companies than in any other kind of corporations, and, I was going to say, than in all other corporations together.

Do not be afraid to think of the doctrine, whatever conclusion you come to at this time. Do not be afraid to say that if the protection of a certain part of our fellow-citizens is worthy of your consideration, the protection of a certain other part is also worthy of your consideration. If you read the reports of the railroad systems of Ohio, I doubt if you can find a single railroad that has been constructed in this state since 1879 that has not been constructed on the basis I speak of; where five men, or two or three men for that matter, in New York or elsewhere, wanting to make money, not out of the operation of a railroad, but out of its construction and the sale of its securities, have built every railroad which has been built in this state for the last fifteen years; and if there is one of those railroads that has not sunk under its debt and involved a loss of millions to the people who have invested in its securities, as well as to those who have invested in the securities of other railroads, I do not know it.

These are some of the questions that we should consider if the final determination of this question is

to be passed for another year. I should be glad to have the members of the Association take into their thought the subject of whether it is worth while to protect bona fide investors in existing properties against the schemes and operations of men who want to create corporations, not because the public has any use for them, but simply because, by means of them, they can gull the public and get them to buy their bonds and stock.

In the light of what I have said, it seems to me that this proposed action does not meet the case. It will not protect the stockholder of existing corporations. It will not protect innocent citizens who may be inclined to invest in the securities of railroad companies; and I should be in favor of asking for a change in our laws that should require the capital stock of a railroad company to be fully paid in cash or its equivalent. I am not afraid of that term, "or its equivalent." There is a means of finding what the equivalent in cash is, just as in regard to any other issue that is presented to a court. It can be done perfectly well.

What my friend said about patent rights reminds me of a case that I know something about; where a son of one of the eminent lawyers of Ohio, when whittling one day, struck upon a device for a link chain, by which two pieces of wood, cut in a certain way, would lock together, and could not become unlocked unless they were put back into the certain position in which they were locked. It suggested the idea of an endless chain to take the place of a belt. That young man tried for a year and a half to get somebody interested with him in the manufacture of metal links. It took only two links. They were all alike. Curved in a certain fashion at one end and in a certain fashion at the other end. Just one single piece of malleable iron was all there was to it, and all links were alike. He tried for

a year and a half to sell an interest in that little device, and finally succeeded in selling an interest for a small sum of money, which was wholly insignificant; and the people who bought it made millions out of it; and the chain which was produced in that way is used now on nearly all light and heavy hoisting apparatus, in grain elevators, on bicycles, threshing machines, sewing and reaping machines.

But time is needed to develop the value of these things, and I think the public guardianship will go far enough if it enacts a system of law somewhat identical to this, which shall insist upon cash or its equivalent being paid, and trust to a judicial or official inquiry to secure justice and safety, as we do in respect to all our other important and financial concerns.

Now, I wish to say one word, before I close, of tribute to Mr. Warner M. Bateman. I was here when he read his able address three years ago. He was my personal friend. When he read his address I was impressed with the idea that it did not fully cover the ground for the reason that he did not have time, perhaps, to think of the other things that occur to me. I can say now, when he is taken away from us, and will never be seen among us again, that, of all the men I ever knew, I do not remember to have known one who had a more conscientious, a more steadfast, and a more persistent desire to do good to his fellow men than Warner M. Bateman.

Mr. Jno. L. H. Frank, Dayton: As we meet again before the legislature meets, I think we might as well postpone this until our next meeting.

The President: Another motion to postpone will not be in order; but I will rule that Mr. Wald's motion to refer this to a special committee is in order; and the question is now upon that motion—to refer it back

to a special committee of three, to be appointed by the Chair, and report at the next meeting.

The motion to refer to a special committee was carried.

The President: The committee will be announced before the adjournment.

Will the Secretary read the next recommendation?

The Secretary read the next recommendation, as follows:

"4. That the statute be so amended that where a person is convicted of murder in the first degree or murder in the second degree, and the reviewing court is satisfied that the evidence required a conviction for a lower degree, it shall, instead of reversing the judgment and remanding the cause for a new trial, modify the judgment by imposing a sentence appropriate to the grade of crime of which it finds the accused might have been convicted, it not being a higher grade than that of which he was convicted."

A motion to adopt the recommendation of the committee was carried.

The Secretary read the fifth recommendation of the Committee, as follows:

"That the statute be so amended as to prohibit arrests for offenses that are not *mala in se*, and provide for the institution of proceedings by the prosecuting officer by filing an information before the proper court and causing a summons to issue thereon."

A motion to adopt the recommendation of the Committee was carried.

The Secretary read the sixth recommendation of the Committee, as follows:

"That the law relating to larceny, embezzlement and receiving or concealing stolen property, be so changed that where the property is found by the jury

to be of a greater value than $100, the penalty shall, in all cases, include imprisonment in the penitentiary, but where it is found to be of a less value than $100, the trial judge may at his discretion sentence as for such felony, or as is now provided by law, where its value is less than $35."

Mr. James O. Troup: I would like to ask the reason of the Committee which seemed to them to exist for suggesting this change. I have not myself had much to do with criminal practice, but about fourteen years ago I was prosecuting attorney of my county, and I confess that I am not able to intelligently vote on this question, as to what benefit will arise from the change.

Mr. Simeon M. Johnson, Cincinnati: I am not a criminal lawyer myself, but it was desired to change the statute so that above $100 a certain penalty should attach. To raise it from $35 to $100. But the main object of the suggestion is that the trial judge should have an opportunity to judge in the particular case what punishment should be meted out to the offender. In other words, if it be less than $100, if it goes down to a dollar, if a malefactor or a habitual criminal be convicted of stealing a small sum, that the court may impose such penalty as it may see fit. If it were a first offense, it can discharge him.

The President: The object is to give the trial judge greater latitude in fixing the sentence, I understand.

Mr. Johnson: Yes, sir.

A *viva voce* vote was taken on the motion to adopt the recommendation of the Committee, and the President decided that the motion was carried. Whereupon, a member called for a division. A rising vote was taken, and the motion was carried.

The Secretary read the next recommendation, as follows:

"7. That a municipal corporation may maintain any appropriate action to recover back its property illegally conveyed or transferred, notwithstanding the participation of its officers in the unlawful transaction in which such conveyance or transfer was made, or in which such property was acquired by the corporation."

Hon. W. T. Spear, Columbus: I would ask that some member of the Committee give a reason for its adoption.

Judge Munson, Zanesville: Under section 21 of the Revised Statutes of Ohio, there is no question that personal property may be recovered; but there is a question whether it covers real estate—whether or not the city may, through its officers, be considered *in pari delicto*, and therefore not entitled to recover back real estate. For instance, take the village of Put-in-Bay, or Sandusky, which would perhaps be a better illustration. Sandusky buys a piece of real estate in order that it may be one of the promoters of a stock company, of manufactures, employing labor. Now, it has no right under the law to buy this real estate; but it does; it then undertakes to convey the property to the corporation so promoted and established. I think there is a very grave question, under the decisions of our courts, whether the municipality can recover back this real estate. It is a participation in an illegal transaction; engaged in an illegal act; and while it could recover back, under the section to which I have referred, the money actually invested in such enterprise, it is a question whether it can recover the real estate. It is doubtful at least, under the holdings of the courts. It seems to me, looking to a case decided by one of the Circuit Courts, and a more recent case decided by the

Supreme Court, that there is a question whether the doctrine *in pari delicto* may not be applied in the instance I give. And, if this piece of property so conveyed by the municipality, in the meantime becomes encumbered by creditors of the corporation, as by a judgment lien upon it, it would be of no value, perhaps to the municipality, even though recovered. The property ought not to be either by application of the rule of *in pari delicto*, or by liens against it, lost to the people; the people ought to have a right to recover it; and, to prevent loss to them, whoever buys the property from the municipality ought to take it *lis pendens*, so to speak, that is, there ought to be no power to make or permit valid incumbrance against it; that would prevent the encumbering of it; and no rule of *in pari delicto* should apply to prevent its being recovered back.

The illustration given shows that such an amendment as proposed would make clear that section 21 means not only the recovery of money, or personal property, but land as well, illegally conveyed by the municipality; and no lien should be superior to the municipality's right of recovery.

Hon. W. T. Spear, Columbus: The case referred to by Judge Munson, recently decided by the Supreme Court, is a case in which the village of Mineral City was a party (*Markley* v. *Mineral City*), and the holding in that case was that the municipality had not the power under our statutes to acquire land for the purpose simply of transferring it to somebody to encourage the building of manufacturing establishments; and that is the extent of the holding in that case. It did not go to the question of the power of the officers, or the effect, rather, of the act of the officers of a municipality in unlawfully attempting to convey prop-

erty which was the property of the corporation; but it only went simply to the point that the corporation under our statutes, could not become the owner of land under the circumstances referred to, for the reason that the municipality has the capacity to acquire real estate for municipal purposes only, and that that was not a municipal purpose. So it would seem that that decision does not encourage the participation of officers in such illegal transactions, but, on the contrary, discourages such conduct.

Just exactly what this proposition would be held to mean with respect to persons who might acquire property innocently, which was owned by the corporation, I do not know. Judge Munson seems to suggest that even an innocent purchaser of municipal property should not be protected. I would think that that subject would want pretty careful consideration before the legislature should be asked to go to that extent. If that is not the purpose, then coming to the question as to the necessity for any further legislation upon the effect or the power of municipal officers to convey away the property which is owned by the village, where it is illegally or improperly done, it does not seem to me that the law is in doubt. Perhaps the gentleman's attention has not been called to a case decided by the Circuit Court of the Seventh Circuit, in which the Village of Kent was a party, reported in one of the recent reports of the Circuit Court. I cannot recall the number, but it is within a very short time. The principle held is that municipal officers have not the power to give away the property of the corporation, whatever form they may resort to in the attempt. And the decision is good law in Ohio until reversed by the Supreme Court, which isn't likely to happen.

A Member: The Tenth Circuit Court Report.

Mr. Spear: Well, the Tenth Circuit Court Report, the gentleman says. It seems to me that that lays down all the law that is necessary to protect a municipality from the illegal act of its agents in endeavoring to make way with the title to that which the municipality actually owns, for the purpose of encouraging these enterprises, which seem to be favorites in small places.

The proposition under consideration is, I think, one that would not serve any useful purpose; and, having lived next door to several General Assemblies during the last thirteen years, I have learned to rather dread the idea of going to the General Assembly for any particular legislation unless it is absolutely necessary. (Applause.)

Judge Munson: With the consent of the Committee, I will withdraw the recommendation.

Mr. A. R. McIntire, Mt. Vernon: I was going to refer to a case in the Supreme Court, which I think takes the place of the whole thing.

The President: With the consent of the Association, the Committee may have leave to withdraw the recommendation.

Leave was given, and the recommendation withdrawn.

The Secretary then read the eighth recommendation of the Committee, as follows:

"It shall be a crime, punishable as for obtaining money under false pretenses, for any president, director, manager, cashier or other officer of any banking institution, to assent to the reception of deposits, after he shall have knowledge of the fact that such institution is insolvent, or in failing circumstances; and any such officer, agent or manager shall be individually responsible for such deposits so received."

Mr. Simeon M. Johnson: A suggestion has been made, which I do not think any member of the Committee will object to, that there be inserted, after the words "banking institution," the words, "or building association," at the end of the third line. That does not seem to have been brought to our attention when we were considering it, but it ought to be in there. I move that the suggestion be amended in that respect.

Seconded and carried.

Mr. E. R. Eastman, Ottawa: I would like to ask that the suggestion include the words "building and loan association."

Mr. Johnson: There is no objection to that.

(Adopted.)

The President: Are there any remarks?

Judge Burket: It seems to me that that is a provision that would be very dangerous to adopt in this state. Suppose that a receiving teller should conclude that he did not want to go to the penitentiary for receiving a deposit, or did not want to make it good, and he would refuse to receive it without consulting with the president, cashier or board of directors. The moment that he would refuse to receive a deposit it would be known that, in his opinion, the institution was in such a condition that he personally was in danger, and it would at once create a run upon the bank, which would have to be met as any other run, and it would, of course, either break the bank, or it would have to make extraordinary efforts to reassure the public that it was sound.

Mr. Johnson: Would a receiving teller be an officer of a banking institution?

Judge Burket: The receiving teller is the one who receives the deposits. He is the manager of that department of the bank. Suppose we take the cashier,

or the president, or whoever attends to the business or manages; it makes them do business with a rope around their neck. Suppose a panic comes on, such as we had in '73 or '93, and values are decreased. You cannot tell whether an institution is solvent or insolvent. Upon the trial of the question to a jury, they would at once say: "Why, it was insolvent, and he knew it, or ought to have known it," and it would make a panic like we had in '73 and '93 ten times worse, and it would be greatly to their detriment. At such a time as that, it would be unsafe for any person who was running a bank to receive deposits, because he would be thereby assuring that the value still existed in the real estate that it owned, or in the notes, loans and discounts that it held; that the parties are not insolvent; that they can be collected, and, if not, he would go to the penitentiary. It seems to me that it would be damaging the business interests of the state, and make them ten thousand times worse than the evil that is to be remedied. The deposits that have been made are entitled to just as much protection whether made early or late. There is no reason why a depositor who comes in late, when the bank, as they say here "is insolvent, or in failing circumstances," there is no reason why he should fare any better than one who should come in a week earlier, and still have his money there. Of course, they all come in good faith; and when a bank is running under such circumstances, it cannot stop and refuse to take the deposits without saying to the world at once, "We are insolvent," and put up the shutters. The matter of putting up the shutters is a matter to be determined by the directors. They are the ones who run the bank, and not the cashier, or the president. The matter of saying that "We will no longer continue business," is for the directors, and not for the presi-

dent, or manager, or receiving teller; and to compel those officers, by consenting to the receipt of a deposit, to be apprehended as felons and go to the penitentiary, when it is not their business to determine the matter, seems to me a very drastic remedy for an evil that is not really so bad as it is sometimes supposed to be.

There is another matter that strikes me as very doubtful: Take a national bank, and they are regulated by Acts of Congress. It is very doubtful whether a state legislature can regulate the running of a national bank without the consent of Congress. If that is the case, one set of banks in the state would be conducted in one way, and another in another way.

Mr. Johnson: This is a copy of the National Banking Act almost literally.

Judge Burket: Yes, but that is a copy of the banking act that the Federal government has passed. But it has not consented that the state may put its foot in and undertake to regulate a national institution. So it seems to me that the remedy is a great deal worse than the evil.

Mr. Johnson: It seems to me that there is some force in the gentleman's argument; but still, I do not think he has fully considered the question. There ought to be some remedy afforded to people who are victimized by banking institutions and building associations receiving deposits when they are known to be insolvent. It is against their lack of conscience that this suggestion is aimed. This suggestion, No. 8, has been taken from the National Banking Act, and in some measure from the provisions of the Louisiana statutes. The argument is that it would interfere with the national banking system. I do not think it would. When congress has legislated upon a subject, that shows it has taken exclusive jurisdiction over the

subject, and this provision could then have no effect as against the national government. There surely should be some protection to the number of victims who every year are the losers by the dishonest actions of agents of insolvent banks.

We are merely a debating club this year. This is nothing more than a suggestion; but still there should be some punishment meted out to these persons who represent these insolvent corporations. As to who are to be reached by it, and the details, should be determined hereafter; but it should be the sense of this meeting that banking institutions should be held to some responsibility. I have not seen that national banking associations are crippled by the provisions as to national banks. I have not heard of any in Louisiana that have been hurt by the existence in that state of a similar provision. It should be regarded a necessity in this state, and a reproach to us that we have nothing which exacts honest conduct on the part of these institutions.

Mr. H. J. Booth, Columbus: During the last session of the General Assembly, at the request of a member of the House from my own county, I drew a bill which embodied all of the features covered by this proposition, and perhaps some others. It was perhaps a little more strict, having been based, however, entirely upon provisions contained in statutes of other states that have been in force from one to nineteen years; all of those states, except Pennsylvania, being west of the Allegheny mountains. Such acts are in force in at least eleven states. Three of them, Illinois, Missouri and Indiana, make the reception of a deposit within thirty days immediately preceding the failure of the bank *prima facie* evidence of guilty knowledge. That feature was embraced in the bill which I drew.

In nearly all of those states the reception of money in violation of the terms of the act is made a felony. There have been a number of convictions under those statutes, which, on review, have been held to be constitutional. My recollection is that neither of them has been repealed, or materially modified.

Now, it seems to me that a provision of this kind, coupled with a provision for frequent and thorough investigation of all concerns doing a banking business in Ohio, other than national banks, would be of very great benefit to the public as a protection against loose business methods that prevail in so many banking institutions. I believe that such an act ought to be passed; but, in view of the reception given to the measure which was drawn and referred to the Committee last winter, I doubt very much whether a legislature, composed of the same gentlemen who compose the present one, could be induced to pass such a measure. Some of them, of course, have outlived their day of usefulness and popularity, but some of them will be re-elected. That bill had very little support, but I believe that a measure of that kind, supported by the State Bar Association and by the press, and even by the more intelligent bankers of the state, could, and would, certainly be enacted into a law. I think, however, more good could be accomplished in the same direction by providing for an adequate and thorough system of bank inspection. I would like to see both of those propositions submitted to the next General Assembly with the endorsement of this organization.

The President: If there are no further remarks, the question is upon the adoption of the recommendation of the committee, including building and loan associations as well as banking institutions.

The report as amended was adopted.

The Secretary then read the ninth recommendation of the Committee, as follows:

"That no one but a member of the bar shall be eligible to the office of probate judge."

The Secretary: The balance of the recommendation was stricken out.

The President: The printed report has been amended by the Committee in their formal report, so that it now is, "That no one but a member of the bar shall be eligible to the office of probate judge," omitting the word "state" before the word "bar," and the balance of the recommendation as printed in the pamphlet.

The recommendation of the Committee was adopted.

Mr. M. A. Norris, Youngstown: I wish to offer a resolution, to get it before the Association, to cure an evil that appears from the President's address, and must appear to every lawyer who has practiced in the Supreme Court. That is, the large number of cases that are decided and the bar does not know what cases are decided, or how they are decided. Of course, it is impracticable to publish in the reports the decisions in all the cases passed on by the Supreme Court, but it seems to me that there is a way by which the litigants or parties in the case may have an explanation of the motive of the judges in rendering the decision; and I offer this resolution:

"Resolved, That it is the sense of the Ohio State Bar Association that the laws of Ohio be so amended as to enable and require the Supreme Court of the state, in all cases not to be reported in the regular volumes of Supreme Court Reports, to decide all questions properly submitted in such cases and publicly announce their decisions. Such decisions to be taken down by the stenographer provided for that purpose and copies

thereof furnished to the parties to the case or their counsel; and that in all cases decided by the Supreme Court it shall be publicly announced what members of the court concurred in the decision given."

I offer that resolution for such action as this Association may desire to take, and I move its adoption.

It was moved that the resolution be referred to the regular Committee on Judicial Administration and Legal Reform, seconded, and the resolution referred accordingly.

The President: The Secretary calls my attention to the fact that there are a number of committees that ought to be discharged, so that the Association will not be at the expense of carrying them in the minutes. The Committees are: The Special Committee on New Rooms for Supreme Court and State Law Library; the Special Committee to Present Rules to Supreme Court for Examination and Admission to the Bar; the Special Committee to Welcome American Bar Association at Cleveland; Special Committee to Examine Charges of Professional Misconduct.

Mr. Simeon M. Johnson: I move that all of said committees be discharged.

Seconded and carried.

The Association adjourned to tomorrow morning at 10 o'clock.

THIRD DAY—MORNING SESSION.

Hon. Asa W. Jones, Youngstown: Mr. President, I learn that the gentlemen whom we expected here to read papers are not here, and also that a good many members are going away this afternoon; and I take it that we all have an interest in hearing the memorial papers on our friends who died during the last year;

and I move that the program be changed to read the papers this forenoon instead of this afternoon.

Seconded and carried.

Judge Pike: Among the names of applicants that will be read, there is one that is a trifle out of the usual order. Eight years ago the qualifications of the gentleman referred to were passed upon and he became a member, but he left the state, and I didn't know it, and suspended him. He is a resident of New York, and he has put in his application that he wants to belong to the Ohio State Bar Association, although he belongs to the state of New York. I have noted the application and I hope that is not violating any rule.

The President: It will come up with the other applications.

We had postponed until today, in connection with the obituary papers, the report of the Committee on Legal Biography, and that will be in order now.

Hon. S. R. Harris, Bucyrus: I have but a very brief report to make. For the benefit of newly elected members, I will say that I have before me a book of autobiography of members of the Association, having probably four or five hundred names. I do not know exactly how many. The majority I have collected myself. I did not come directly from home, or I would have brought with me suitable blanks to distribute among the new members to be filled out, but I will have a list of their names and I will send to their post office addresses very shortly the blanks for the necessary biography. We have a book on the table here that is open for any member who desires to look at it, which contains the names and autobiographies of nearly all the members up to a certain period of time. Many of the early members have gone to their last home, among them, Judge Ranney, Durbin Ward and Rufus King.

It is important that it be kept up; and I will solicit an answer from the newly elected members to whom I will send blanks, so they may also be preserved in this book.

The mortality among our members has not been so serious the past year as it has been in former years; but many of those who were stricken were shining marks, and their loss a bereavement to our Association.

It falls to the lot of the Chairman of your Committee to deal with the more melancholy features of our Association, but I do it cheerfully as a duty and have done so for years. There have been no deaths formally reported to me, but some of them came to my own knowledge since the last meeting. Among others was Judge Pomerene of the Circuit Court. There will be a memorial address by Curtis E. McBride, of Mansfield, who was his friend, and practiced before him. Henderson Elliott, for many years associated with our Association, once as President, and always a very active and very dear member of this Association. We expect to have a memorial address in regard to his life by John A. McMahon. Warner M. Bateman died since our last meeting, and we expect to have an address, as you have seen upon our program, by Hon. John A. Shauck. John J. Hall, who was a former President and active member of the Association since its inception, died since our last meeting, and we expect to have a paper read by Judge Kohler, which was prepared by Judge Marvin, who was unavoidably prevented from attending this meeting. E. H. Fitch died since our last meeting, and there will be a paper read in regard to him, by Judge J. B. Burrows.

There is a personal friend of mine who died since our last meeting—Emery D. Potter.

Judge Pike: He was never a member.

Mr. Harris: I find his name in the list.

Judge Pike: The old gentleman.

Mr. Harris: Well, I thank you for the suggestion. There was an Emery D. Potter whom I knew in the early part of my practice, who held court up in the Northwest since I came to the bar, and he had a son Emery D. Potter, Jr., and who I supposed belonged to the Association.

Judge Pike: The deceased was his son.

Mr. Harris: That is all the report I have to make.

Judge Pike: I move that the Chairman be authorized to incur the necessary expense to complete the report, and that the Treasurer be authorized to pay the same.

Seconded and carried.

The President: The first on the list is a memorial on the late Judge Henderson Elliott, prepared by Hon. John A. McMahon, which Mr. Marshall will read.

Mr. R. D. Marshall, Dayton: At the request of the Executive Committee and other friends of Judge Elliott, Mr. John A. McMahon was requested to prepare a memorial on the late Judge Elliott. A short time since, Mr. McMahon's oldest daughter died, and he has felt very much broken up on account of it, and I found on my return home the address which I have in my hand, prepared by Mr. McMahon, with a letter asking me as a favor to him to read this address, saying that I would know the reason why he did not feel like being with the Brethren at this time. I offer this as a reason why he is not here to deliver his own address.

(Mr. Marshall read the memorial on the late Judge Henderson Elliott, for which see Appendix III.)

The President: The next in order is a memorial on the late Warner M. Bateman, prepared by Hon. John A. Shauck.

(Judge Shauck read the memorial on the late Warner M. Bateman, for which see Appendix IV.)

The President: The next is a memorial on the late John J. Hall, which has been prepared and was to have been presented by Judge Marvin, but who is now occupied in aiding the course of justice in the First Judicial Circuit, and who came to see me with his address and a letter saying that it was impossible for him to leave the court, and requesting Judge Kohler to read the paper for him, which the Judge will now please do.

Judge Kohler: Mr. President, there are many here I think this morning who will remember that at the last meeting of this Association Mr. Hall was present. He was fully conscious at that time that it was the last meeting of this Association that he would ever attend. He knew his days were numbered; and yet, there are many here who will recall his cheerfulness, and the pleasure that he received on that occasion in meeting with his friends, the members of this Association. He died very soon after our last meeting, and this brief memorial which I will read, as has been stated by the President, was prepared by Judge Marvin, and at his request I will read it.

(Judge Kohler read the memorial on the late John J. Hall, for which see Appendix V.)

Judge Pike: Pardon me, Mr. President, if I detain you just half a minute in reference to Judge Hall. I wish to make a statement in reference to his great attachment to the Association. At the last meeting he says to me: "Brother Pike, this may be the last time I will be able to come here; but one thing I beg of you,

if I should not be able to come here, and sickness prevents me from sending you my dues, you pay them, and I will pay you; don't let me die a suspended member.

The President: The next paper upon our program is a memorial on the late E. H. Fitch, to be read by Hon. J. B. Burrows.

(Mr. Burrows read the memorial on the late E. H. Fitch, for which see Appendix VI.)

The President: This completes the list on the printed program, but the memorial on the late Julius C. Pomerene, by Mr. McBride, was voted to be heard at the conclusion of these papers.

(Mr. C. E. McBride read the memorial on the late Julius C. Pomerene, for which see Appendix VII.)

Mr. William H. Blymyer, New York: Mr. President, if it is in order, I should like to make a motion of condolence.

The members of the Bar Association who were present here in 1890 will remember the entertaining address that was delivered by the Honorable John F. Dillon upon the life of Jeremy Bentham. Judge Dillon has spoken to me repeatedly of his pleasant remembrance of that meeting. Today, Judge Dillon is prostrated by one of the greatest calamities that could befall a man. All of you have noticed that his wife and daughter perished in the disaster to "La Bourgogne." He has not even the consolation of knowing that they went to sleep peacefully in a watery grave; but the awful thought confronts him that they may have been the victims in one of the most horrible crimes of which the sea can tell.

Judge Dillon is a man of extreme mental activity, and I know that a blow of this sort could fall upon no one with greater force. I therefore move that the

Secretary be directed to convey to Judge Dillon the expression of our most profound sympathy.

The motion was seconded, and carried unanimously. The following telegram was sent:

"Put-in-Bay, July 14, 1898.

"To Hon. John F. Dillon, Far Hills, N. J.

The Ohio Bar Association, which bears you on its roll of honor, sends you its remembrance and sympathy in your time of sorrow.

JUDSON HARMON, President."

The President: The formal program for the afternoon, which we have brought forward to the morning, is now concluded. Is it the desire of the Association that we proceed with the remainder of the afternoon program?

Several Members: Yes, sir.

The President: I will consider the motion as having applied to that. The next think in order is, unfinished business of the previous day. Is there anything, Mr. Secretary?

The Secretary: I believe not.

Judge Pike: The Committee on Admissions and Elections state that they have a report to make.

Mr. Mykrantz, Chairman of the Committee, read the report:

SECOND SUPPLEMENTAL REPORT OF COMMITTEE ON ADMISSIONS AND ELECTIONS.

To the Ohio State Bar Association:

Mr. Chairman and Gentlemen: Your Committee on Admissions and Elections further report that we recommend the election of the following named lawyers as members of this Association:

J. Herman Smith, Piqua.
Herbert W. Wolcott, Cleveland.
Hulbert D. Smith, Ceveland.
John Duff, Oak Harbor.
Theodore Sullivan, Troy.
Lee Elliott, Seville.
Chas. T. Brooks, Salem.
E. H. Moore, Youngstown.
Peter A. Laubie, Salem.
J. W. Overturf, Delaware.
J. W. Hollingsworth, St. Clairsville.
Thos. F. Conley, Bowling Green.
John Cooper Loomis, Tiffin.
J. C. Royer, Tiffin.
James C. Tobias, Bucyrus.

Your Committee recommend the reinstatment of the following named members:

H. R. Probasco, Glendale.
John J. Sullivan, Warren.
William H. Blymyer, New York.

Respectfully submitted,
H. A. MYKRANTZ, Chairman.

Hon. A. W. Jones, Youngstown: I move that the Secretary be instructed to cast the unanimous vote of the Association in favor of these applicants.

Mr. James O. Troup, Bowling Green: I wish the Secretary would add to that the name of Thomas F. Conley, whom I recommend, and will at once fill out the application.

The Secretary did as requested, and was instructed to cast the ballot of the Association for the gentlemen named, and that having been done, they were declared to have been elected to membership.

The President: The next thing in order is, matters members desire to bring before the Association.

Hon. A. W. Jones, Youngstown: Mr. President, I do not know of any further business excepting the report of the Committee appointed to name officers for the ensuing year. I move that that Committee be called upon.

Seconded and carried.

The President: I will call for the report of the Committee on the Nomination of Officers.

Judge Burket: I will report that the Committee met last evening at eight o'clock, and, after due deliberation, they present for President the name of Hon. Virgil P. Kline, of Cleveland; for Secretary, H. A. Mykrantz, of Ashland; for Treasurer, Hon. L. H. Pike, of Toledo.

The following is the report of the Committee:

To the Ohio State Bar Association:

Mr. Chairman and Gentlemen: Your Committee appointed for the purpose of recommending officers of this Association for the year 1899, make the following nominations:

For President—Hon. Virgil P. Kline.
For Secretary—H. A. Mykrantz.
For Treasurer—L. H. Pike.

Respectfully submitted,

H. A. MYKRANTZ, Secretary. JACOB F. BURKET, Chairman.

Dated July 13, 1898.

Hon. A. W. Jones: I move the adoption of the report.

Seconded and carried unanimously.

NOMINATING COMMITTEE.

Chairman, J. F. Burket, Findlay.
Secretary, H. A. Mykrantz, Ashland.
1st District, H. R. Probasco, Glendale.
2d District, C. W. Dustin, Dayton.
3d District, J. J. Moore, Ottawa.
4th District, H. Van Campen, Toledo.
5th District, George K. Nash, Columbus.
6th District, H. A. Mykrantz, Ashland.
7th District, A. R. Johnston, Ironton.
8th District, John J. Adams, Zanesville.
9th District, E. H. Moore, Youngstown.
10th District, J. F. Burket, Findlay.

Mr. W. H. A. Read, Toledo: Mr. President, under the head of, "Matters members desire to bring before the Association," I would like to present something that probably should go to the Committee before it comes here. I do it at the request, however, of a number of attorneys who have discussed the proposition, and thought that this would be a better way to have it placed upon the record, so that during the next year the profession generally can examine the matter. It is a matter that it seems should go, and go very speedily, to the legislature of the state, in view of the decision that was rendered by our Supreme Court in March last in relation to Section 5382 of the Revised Statutes and contiguous sections, requiring, under the construction that the Supreme Court have put upon it, that all moneys that are collected upon execution by sheriffs during a term shall be retained by them until ten days after the term shall have expired, in order to allow other people to have a share in it if they can get an execution at that term. In the cities where there

are long terms of court, where courts are practically in session the year 'round, by reason of holding the terms open, it creates a great hardship, and the legislature should certainly correct an evil that is now apparent.

I simply, as I said before, mention it here that it may go on the record that it may be examined during the year. I move that it be referred to the proper committee.

The President: I suppose no formal vote is necessary. You make a motion that the attention of the Committee be called to that, but no formal action is necessary.

Mr. Read: Yes, sir.

Carried.

Mr. Simeon M. Johnson, Cincinnati: Iwish to offer the following resolution: "Resolved, That it is the sense of this Association that the salaries of the judges of the Supreme Court of Ohio should be increased to a sum commensurate with the dignity of the position, and the arduous duties of the office."

(Applause.)

Mr. J. J. Moore, Ottawa: Mr. Chairman, this Association has attempted to have the salaries of the judges of the state increased ever since its organization. I know of no way to do that excepting to have the members of the Association candidates for the legislature, if we are to succeed. We have made that attempt time and time again, and always have failed. I can not see the object in making any further effort.

The President: It is to express our continued belief.

Mr. C. E. McBride, Mansfield: I was unfortunate enough to be in the General Assembly several terms, and if the Bar Association will not put in so much time in passing resolutions as to what they want, but each

member will keep in touch with the members of their particular counties, and will interview them a little and put in a little time asking them to pass certain measures, we will accomplish more that way than we can here.

Hon. A. W. Jones, Youngstown: We had better send Mr. McBride down there.

Mr. Simeon M. Johnson, Cincinnati: I think the Association should pass this resolution. I do not care how often we failed before; if we try now, we can succeed, and I know it. If we start with the resolution, we can proceed in some regular fashion through the local associations to influence the members of the bar in the different counties of the state to make some united effort to accomplish this. It can be done. The reason it has not been done before is because there has been no united effort. This is the starting point. Now let us try.

The resolution was seconded.

Mr. J. T. Brooks, Salem: Allow me to ask whether it would be wise to suggest a definite sum.

Mr. Johnson: I think not, Mr. Brooks.

The President: The resolution did not name a sum.

Mr. Brooks: No, it did not name a sum.

Mr. Johnson: I think, if I may offer my own opinion on the subject, it would be unwise to name any sum. I think we will have to go at progressive stages. I think we might manage to get five hundred or a thousand at one clip, and so much at another. The increases that have been made I find upon investigation have been from five hundred to a thousand. I believe we could not get from the legislature any increase over five hundred or a thousand dollars at a time, and I thought

it would not be wise to name any sum. There may be a difference of opinion about that.

Mr. J. T. Brooks, Salem: I move to amend by taking the step bravely, and doing what every one, I guess, thinks we ought to do at once and insert six thousand dollars a year, and fight for it.

Seconded.

Mr. Johnson: I consent to it.

The President: By consent, that may be put in the resolution, if there is no objection.

There was no objection made, and the resolution was adopted.

Mr James O. Troup, Bowling Green: While we are upon this subject, I would like to get the opinion of some of the members present as to the advisability of at the same time trying to get the salaries of the Circuit Judges increased to five thousand dollars. It ought to be done, but I am really a good deal at sea in my mind whether it is best to attempt this in connection with the increase of the salaries of the Judges of the Supreme Court, or whether it might result in defeating the whole thing. I bring that up now for the purpose of getting the opinion of the Association.

The President: Do I understand you to make a motion, Mr. Troup?

Mr. Troup: I suppose that is the only way to get it before the Association. I move that it is the sense of the Association that the salaries of the Circuit Judges should be increased to five thousand dollars. As I said before, I do not know whether it is wise to attempt this at this time, but for the purpose of getting an expression on the subject.

The President: Is the motion seconded? I hear no second. It seems to be the sense of the Association that it is not wise to do so.

The President called upon the districts for nominations for members of Standing Committees and Vice Presidents, and upon the reports being received, appointed the gentlemen nominated upon the several committees, and the gentlemen named were elected Vice Presidents.

(For the list of committees and their officers, see pages 141 to 143.)

The President: We have a telegram from Judge Owen, which the Secretary will please read.

The Secretary read as follows:

"Bay View, Mich., July 13, 1898.

"To the Hon. Judson Harmon, President Bar Association of Ohio:

"Your kind message tempers my deep regrets at my absence and its cause. Thanks.

SELWYN N. OWEN."

The President: The Special Committee on Railroads and Transportation will be reappointed. I think their services have been eminently satisfactory: R. D. Marshall, L. K. Parks and A. J. Woolf.

As delegates to the American Bar Association, the Chair will appoint: J. H. Collins, of Columbus; John L. Locke, of Cambridge, and J. C. Harper, of Cincinnati.

Judge Moore: As it appears that we are about ready to adjourn, I move that the thanks of this Association be extended to the President and other officers for the able and efficient manner in which their duties have been performed. And, knowing the inherent modesty of the President, I will put the motion.

The motion was put by Judge Moore, and unanimously prevailed.

Mr. E. R. Eastman, Ottawa: Mr. President, before we adjourn, I think we ought to take up this sug-

gestion No. 4 that was adopted yesterday and refer it to the same Committee to which No. 3 was referred, so that it may have further consideration. "That the statute be so amended that where a person is convicted of murder in the first degree, or murder in the second degree, and the reviewing court is satisfied that the evidence required a conviction for a lower degree, it shall, instead of reversing the judgment and remanding the cause for a new trial, modify the judgment by imposing a sentence appropriate to the grade of crime of which it finds the accused might have been convicted, it not being a higher grade than that of which he was convicted."

I wish to move that it be referred to the Committee to which suggestion No. 3 was referred.

The President: The Chair rules that a motion to refer is out of order, because it has been adopted by the Association, and only a reconsideration can bring it back before the body.

Mr. Eastman: Then I move for a reconsideration. I do not think this Association should pass a suggestion of that kind without fully considering it, and I am satisfied that we did not fully consider it.

(Seconded.)

The President: It is moved and seconded that the vote by which the fourth recommendation of the Committee on Judicial Administration and Legal Reform was adopted on yesterday be now reconsidered.

A Member: What rule, if any, has this Association in regard to a motion to reconsider?

The President: I am not aware of any only the usual parliamentary rule.

Judge Moore: Mr. President, I voted for it, and I will make the motion.

The President: The point of order will be overruled.

The motion to reconsider was put by the President, and defeated.

The President: I am informed by Mr. Belford, Clerk of the United States Court at Toledo, that Judge Hammond, who has been detained by an important jury trial, will arrive on the noon boat.

The Association took a recess until 2:30 P. M.

THIRD DAY—AFTERNOON SESSION.

The President: Judge Hammond, who is now holding court in Toledo, was invited to come over and visit us and make some remarks upon the subject assigned to Judge Owen, whose illness prevented him from talking upon it himself. Mr. Marshall read you the terms upon which he gave the invitation, and upon which it was accepted. The Judge has been too busy to prepare any remarks, but he has kindly come over to address us upon the subject of "Court Room Oratory."

I now have the pleasure of introducing Judge Eli S. Hammond, of Tennessee, who will address you upon that subject.

(For Judge Hammond's address, see Appendix X.)

Judge Hunt, Cincinnati: I move that the thanks of the Association be tendered to Judge Hammond for his courtesy in accepting the invitation of the Bar Association, and for his excellent address upon this occasion.

Seconded and carried unanimously.

Mr. O. S. Brumback, Toledo: Mr. President, inasmuch as Judge Hammond is one of the acting Federal Judges of Ohio, and has for many years been

holding court in our state, coming from his distant home for that purpose; and inasmuch is universally recognized by all of us as a brother member of the Bar of Ohio; and inasmuch as he has expressed his feeling of adoption toward the Bar of Ohio and has always shown himself worthy of every honor conferred upon him, I move, Mr. President, that Hon. Eli S. Hammond be made an honorary member of this Association.

Seconded.

The President: Gentlemen, it is moved and seconded that we celebrate the visit of our friend, Judge Hammond, by electing him an honorary member of this Association.

The motion was put by the President and carried unanimously.

Judge Hammond: Gentlemen, and Mr. President, I wish to thank you for this great honor, for it certainly is a great honor; but I hope it is not a scheme to get out of me another speech.

The President: The only thing that puts him in danger of having to make a second speech is the one that he has already made. So he has imperiled himself, and not by us.

I believe we have finished all the business. As those who were not present this morning may not know, we brought forward tomorrow's program and finished it today.

Before we adjourn, I appoint as the Special Committee to consider the recommendations of the Committee on Judicial Administration, Mr. Gustavus H. Wald, of Cincinnati; Mr. J. T. Brooks, of Salem, and Judge Gilbert D. Munson, of Zanesville.

The following was received by Hon. Judson Harmon, President, from Hon. John F. Dillon:

"Knollcrest, Far Hills, N. J.

"My Dear Judge: I appreciate your kind and tender message of condolence in this time of great sorrow and affliction, and find much comfort in the thoughtfulness of my friends.

"I tender to you and the Bar Association of Ohio my sincere thanks for your sympathy.

"Sincerely yours,

"JOHN F. DILLON."

The Executive Committee announced that Tuesday, July 11, 1899, would be the opening day of the next annual meeting, and the place of meeting would be announced after the January meeting of the Committee.

Adjourned *sine die.*

Officers, Committees and Members.

OFFICERS

SINCE

ORGANIZATION AT CLEVELAND, JULY 8-9, 1880.

Presidents.

*Hon. Rufus P. Ranney.....Cleveland,
July 8, 1880, to July 21, 1881.

*Hon. Rufus King.....Cincinnati,
July 21, 1881, to December 28, 1882.

Hon. R. A. Harrison.....Columbus,
December 28, 1882, to December 27, 1883.

*Gen. Durbin Ward.....Lebanon,
December 27, 1883, to December 31, 1884.

Gen. A. W. Jones.....Youngstown,
December 31, 1884, to December 30, 1885.

*Hon. W. J. Gilmore.....Columbus,
December 30, 1885, to December 29, 1886.

Hon. John A. McMahon.....Dayton,
December 29, 1886, to December 28, 1887.

*Hon. E. P. Green.....Akron,
December 28, 1887, to July 12, 1888.

Hon. J. J. Moore.....Ottawa,
July 12, 1888, to July 18, 1889.

Col. J. T. Holmes.....Columbus,
July 18, 1889, to July 18, 1890.

*Hon. Henderson Elliott.....Dayton,
July 18, 1890, to July 17, 1891.

Hon. Samuel F. Hunt.....Cincinnati,
July 17, 1891, to July 15, 1892.

Hon. John H. Doyle.....Toledo,
July 15, 1892, to July 21, 1893.

* Deceased.

Hon. Stephen R. Harris.....Bucyrus,
July 21, 1893, to July 20, 1894.
Hon. Charles Pratt.....Toledo,
July 20, 1894, to July 19, 1895.
*John J. Hall, Esq.....Akron,
July 19, 1895, to July 17, 1896.
Hon. George K. Nash.....Columbus,
July 17, 1896, to July 23, 1897.
Hon. Judson Harmon.....Cincinnati,
July 23, 1897, to July 15, 1898.
Hon. Virgil P. Kline.....Cleveland,
July 15, 1898, to date.

Secretaries.

Col. J. T. Holmes.....Columbus,
July 8, 1880, to July 18, 1889.
Wm. E. Talcott, Esq.....Cleveland,
July 18, 1889, to July 17, 1891.
Frederick C. Bryan, Esq.....Akron,
July 17, 1891, to July 19, 1895.
Harry B. Arnold, Esq.....Columbus,
July 19, 1895, to July 15, 1898.
H. A. Mykrantz, Esq.....Ashland,
July 15, 1898, to date.

Treasurers.

W. J. Broadman, Esq.....Cleveland,
July 9, 1880, to July 21, 1881.
*Henry C. Noble, Esq.....Columbus,
July 21, 1881, to December 28, 1882.
Telford Groesbeck, Esq.....Cincinnati,
December 28, 1882, to December 28, 1887.
Hon. L. H. Pike.....Toledo,
December 28, 1887, to date.

* Deceased.

Place and Date of Meetings of the Association.

Cleveland	July 8 and 9, 1880.
Columbus	December 28 and 29, 1880.
Toledo	July 20 and 21, 1881.
Cincinnati	December 27 and 28, 1882.
Columbus	December 26 and 27, 1883.
Columbus	December 30 and 31, 1884.
Dayton	December 29 and 30, 1885.
Springfield	December 28 and 29, 1886.
Toledo	December 27 and 28, 1887.
Put-in-Bay	July 11 and 12, 1888.
Put-in-Bay	July 17 and 18, 1889.
Put-in-Bay	July 16, 17 and 18, 1890.
Put-in-Bay	July 14, 15 and 16, 1891.
Put-in-Bay	July 13, 14 and 15, 1892.
Put-in-Bay	July 19, 20 and 21, 1893.
Put-in-Bay	July 18, 19 and 20, 1894.
Put-in-Bay	July 17, 18 and 19, 1895.
Put-in-Bay	July 15, 16 and 17, 1896.
Put-in-Bay	July 20, 21, 22 and 23, 1897.
Put-in-Bay	July 12, 13, 14 and 15, 1898.
————	July 11, 12, 13 and 14, 1899.

Officers.

President.

Virgil P. Kline.....Cleveland.

Secretary.

H. A. Mykrantz.....Ashland.

Treasurer.

L. H. Pike.....Toledo.

Vice Presidents.

1st District.....Lawrence Maxwell, Jr., Cincinnati.
2d District.....Elam Fisher, Eaton.
3rd District.....Justin H. Tyler, Napoleon.
4th District.....Charles S. Bentley, Cleveland.
5th District.....J. D. Sullivan, Columbus.
6th District.....C. E. McBride, Mansfield.
7th District.....Thomas Cherrington, Ironton.
8th District.....Jesse W. Hollingsworth, St. Clairsville.
9th District.....A. J. Woolf, Youngstown.
10th District.....J. W. Schaufelberger, Tiffin.

Standing Committees.

Executive Committee.

Chairman ..... N. D. Tibbals, Akron.
Secretary ..... J. O. Troup, Bowling Green.
1st District ..... Francis B. James, Cincinnati.
2d District ..... R. D. Marshall, Dayton.
3d District ..... S. S. Wheeler, Lima.
4th District ..... N. D. Tibbals, Akron.
5th District ..... M. R. Patterson, Columbus.
6th District ..... Edward Kibler, Newark.
7th District ..... A. R. Johnston, Ironton.
8th District ..... D. A. Hollingsworth, Cadiz.
9th District ..... James P. Wilson, Youngstown.
10th District ..... J. O. Troup, Bowling Green.

Virgil P. Kline, Cleveland,
H. A. Mykrantz, Ashland, } *Ex Officio.*

Committee on Judicial Administration and Legal Reform.

Chairman ..... J. J. Moore, Ottawa.
Secretary ..... F. S. Monnett, Bucyrus.
1st District ..... Simeon M. Johnson, Cinncinnati.
2d District ..... A. F. Broomhall, Troy.
3rd District ..... J. J. Moore, Ottawa.
4th District ..... David J. Nye, Elyria.
5th District ..... H. P. Folsom, Circleville.
6th District ..... J. W. Barry, Mt. Gilead.
7th District ..... Nelson W. Evans, Portsmouth.
8th District ..... J. J. Adams, Zanesville.
9th District ..... Chas. Fillius, Warren.
10th District ..... F. S. Monnett, Bucyrus.

Committee on Admissions and Elections.

Chairman.....E. B. Dillon, Columbus.
Secretary.....T. B. Fulton, Newark.
1st District.....Wm. H. Jackson, Cincinnati.
2d District.....Val. Hartman, Greenville.
3rd District.....B. B. Kingsbury, Defiance.
4th District.....J. F. Laning, Norwalk.
5th District.....E. B. Dillon, Columbus.
6th District.....T. B. Fulton, Newark.
7th District.....H. C. Johnston, Gallipolis.
8th District.....John L. Locke, Cambridge.
9th District.....G. F. Arrell, Youngstown.
10th District.....John K. Rohn, Tiffin.

Committee on Legal Education.

Chairman.....Gustavus H. Wald, Cincinnati.
Secretary.....E. O. Randall, Columbus.
1st District.....Gustavus H. Wald, Cincinnati.
2nd District.....L. F. Limbert, Dayton.
3rd District.....John W. Loree, Celina.
4th District.....G. C. Kohler, Akron.
5th District.....E. O. Randall, Columbus.
6th District.....George W. Carpenter, Delaware.
7th District.....Henry Collings, Manchester.
8th District.....S. M. Granger, Zanesville.
9th District.....T. I. Gilmer, Warren.
10th District.....Chas. M. Melhorn, Kenton.

Committee on Grievances.

Chairman.....D. J. Ryan, Columbus.
Secretary.....Chase Stewart, Springfield.
1st District.....L. C. Black, Findlay.
2nd District.....Chase Stewart, Springfield.
3rd District.....E. R. Eastman, Ottawa.
4th District.....W. H. A. Read, Toledo.

5th District..... D. J. Ryan, Columbus.
6th District.....F. O. Levering, Mt. Vernon.
7th District .....L. M. Jewett, Athens.
8th District .....J. H. Mackay, Cambridge.
9th District .....C. C. Bow, Canton.
10th District.....Robert Carey, Upper Sandusky.

Committee on Legal Biography.

Chairman.....S. R. Harris, Bucyrus.
Secretary.....Thomas P. Dewey, Clyde.
1st District.....Samuel F. Hunt, Cincinnati.
2nd District..... George S. Long, Troy.
3rd District.....C. A. Stueve, Wapakoneta.
4th District.....Thomas P. Dewey, Clyde.
5th District..... Albert Douglas, Chillicothe.
6th District.....J. D. Jones, Newark.
7th District.....A. D. Follett, Marietta.
8th District.....F. H. Southard, Zanesville.
9th District..... F. E. Hutchins, Warren.
10th District.....S. R. Harris, Bucyrus.

(Special) Committee on Railroads and Transportation.

R. D. Marshall..... Dayton.
L. K. Parks.....Toledo.
A. J. Woolf..... Youngstown.

Delegates to American Bar Association.

J. H. Collins.....Columbus.
John L. Locke .....Cambridge.
J. C. Harper..... Cincinnati.

Special Committee on Corporations.

J. T. Brooks ..... Salem.
G. H. Wald..... Cincinnati.
Gilbert D. Munson..... Zanesville.

MEMBERS

OF

The Ohio State Bar Association.

Abernethy, Isaac N.	Circleville.
Adams, John J.	Zanesville.
Albery, F. F. D.	Columbus.
Albery, H. B.	Columbus.
Allen, David A.	Newark.
Alread, J. I.	Greenville.
Ammerman, Chas.	Barberton.
Anderson, James H.	Columbus.
Anderson, Julius L.	Ironton.
Anderson, William S,	Youngstown.
Andrews, Allen	Hamilton.
*Angell, E. A.	Cleveland.
Arnold, H. B.	Columbus.
Arrel, George F.	Youngstown.
Ashley, Charles S.	Toledo.
Aubert, Chas.	Columbus.
Austin, Jas., Jr.	Toledo.
Babcock, W. E.	Columbus.
Badger, D. C.	Columbus.
Baker, Rufus H.	Toledo.
Baldwin, Frank L.	Massillon.
Bannon, J. W.	Portsmouth.
Barber, Jason A.	Toledo.
Barry, John W.	Mt. Gilead.
Bartlett, Robert F.	Mt. Gilead.

*Deceased.

Beavis, William H.	Cleveland.
Beer, Thomas	Bucyrus.
Belford, Irvin	Toledo.
Bell, H. E.	Mansfield.
Benner, C. C.	Akron.
Bennett, S. W.	Bucyrus.
Bentley, Charles S.	Cleveland.
Betts, John E.	Findlay.
Bierley, Thos. N.	Toledo.
Bingham, Edward F.	Washington, D. C.
Black, Samuel L.	Columbus.
Black, L. C.	Cincinnati.
Black, T. F.	Mansfield.
Blymyer, Wm. H.	New York.
Boehmer, Amos	Ottawa.
Booth, H. J.	Columbus.
Boothman M. W.	Bryan.
Bowman D. W.	Greenville.
Bow, Charles C.	Canton.
Boyle, W. C.	Salem.
Boynton W. W.	Cleveland.
Bradbury, J. P.	Columbus.
Brewer, A. T.	Cleveland.
Brice, Herbert L.	Lima.
Brinker, E. W.	Columbus.
Brinkerhoff, Roeliff, Jr.	Mansfield.
Brinsmade, Allen T.	Cleveland.
Brooks, Chas. T.	Salem.
Brooks, J. Twing	Salem.
Broomhall, A. F.	Troy.
Brucker, Lewis	Mansfield.
Brumback, O. S.	Toledo.
Bryan, Frederick C.	Akron.

Buckland, H. S.	Fremont.
Bunker, Henry S.	Toledo.
Burket, Harlan F.	Findlay.
Burket, Jacob F.	Columbus.
Burr, Charles E., Jr.	Columbus.
Burrows, J. B.	Painesville.
Bunts, Harry C.	Cleveland.
Burton, Theodore E.	Cleveland.
Cable, Davis J.	Lima.
Cadwell, J. P.	Jefferson.
Campbell, R. M.	Ashland.
Carey, Robert	Upper Sandusky.
Carpenter, Frank B.	Cleveland.
Carpenter, George W.	Delaware.
Carr, W. F.	Cleveland.
Chapin, John W.	Columbus.
Chapman, H. B.	Cleveland.
Chase, George A.	Toledo.
Cherrington, Thomas	Ironton.
Clark, A. H.	East Liverpool.
Clark, John C.	Greenville.
Clark, James J.	Canton.
Cleveland, Harlan	Cincinnati.
Cobb, C. S.	Akron.
Collings, Henry	Manchester.
Collins, James H.	Columbus.
Conley, Thos. F.	Bowling Green.
Cook, E. S.	Cleveland.
Cook, J. M.	Steubenville.
Cooper, William C.	Mt. Vernon.
Cox, Allen M.	Conneaut.
Cox, Joseph	Cincinnati.
Coyner, George	Delaware.

Craig, G. Ray	Norwalk.
Crane, A. P.	Toledo.
Creed, Jerome D.	Cincinnati.
Crew, W. B.	McConnelsville.
Crow, H. M.	Urbana.
Crosbie, John J.	Columbus.
Crum, Ira H.	Columbus.
Cunningham, Seymour	Chillicothe.
Cummings, Jos. W.	Toledo.
Cummings, S. G.	Mansfield.
Cushing, William E.	Cleveland.
Daugherty, Harry M.	Washington C. H.
Day, James H.	Celina.
Day, William R.	Canton.
Dempsey, Edward J.	Cincinnati.
Dempsey, James H.	Cleveland.
Dennis, Jerry	Columbus.
Devor, William T.	Ashland.
Dewey, Thomas P.	Clyde.
Dickman, F. J.	Cleveland.
Dickey, Moses R.	Cleveland.
Dillon, Edmund B.	Columbus.
Doty, John N.	Findlay.
Douglas, Albert	Chillicothe.
Douglass, S. M.	Mansfield.
Doyle, John H.	Toledo.
Duff, John	Oak Harbor.
Dunbar, J.	Steubenville.
Dunn, Robt.	Bowling Green.
Dustin, Alton C.	Cleveland.
Dustin, C. W.	Dayton.
Dyer, Jos. H.	Columbus.
Eastman, E. R.	Ottawa.

Elliott, Lee	Seville.
Ellis, Wade H.	Cincinnati.
Emery, Thomas	Toledo.
Evans, Nelson W.	Portsmouth.
Ferris, Aaron A.	Cincinnati.
Fillius, Chas.	Warren.
Finch, J. D.	Clyde.
Fisher, Elam	Eaton.
Fitch, Winchester	New York City.
Flory, Chas. L.	Newark.
Follett, A. D.	Marietta.
Follett, John F.	Cincinnati.
Follett, Martin D.	Marietta.
Folsom, Henry P.	Circleville.
Force, Manning F.	Sandusky.
Frank, Jno. L. H.	Dayton.
Fuller, Clifford W.	Cleveland.
Fuller, R.	Toledo.
Fulton, T. B.	Newark.
Funck, Ross W.	Wooster.
Gallaher, J. A.	Bellaire.
Gallinger, Chas.	Bucyrus.
Galloway, Tod B.	Columbus.
Garfield, Harry R.	Cleveland.
Garfield, James R.	Cleveland.
Garrett, Geo. L.	Hillsborough.
Geddes, F. L.	Toledo.
Gilbert, L. L.	Pittsburgh, Pa.
Gilbert, Wm. H.	Troy.
Gilmer, T. I.	Warren.
Gilmer, Thomas H.	Warren.
Gilmore, C. R.	Columbus.
Goff, Frank H.	Cleveland.

Gordon, William	Port Clinton.
Granger, Moses M.	Zanesville.
Granger, Sherman M.	Zanesville.
Grant, Charles R.	Akron.
Greer, J. T.	Toledo.
Gregg, Henry	Steubenville.
Greve, Chas. D.	Cincinnati.
Groesbeck, Herman	Cincinnati.
Groot, Geo. A.	Cleveland.
Grosvenor, Charles H.	Athens.
Guenther, W. G.	Cleveland.
Gunckel, L. B.	Dayton.
Hackedorn, W. E.	Indianapolis, Ind.
Hagan, F. M.	Springfield.
Hale, Jno. C.	Cleveland.
Hall, Theodore	Ashtabula.
Hamilton, Jas. K.	Toledo.
Hammond, Eli S.	Memphis, Tenn.
Harmon, Judson	Cincinnati.
Harper, J. C.	Cincinnati.
Harris, H. W.	Alliance.
Harris, Stephen R.	Bucyrus.
Harris, W. H.	Toledo.
Harrison, Richard A.	Columbus.
Harrison, Jos. T.	Cincinnati.
Harter, Henry W.	Canton.
Hartman, Val.	Greenville.
Hathaway, I. N.	Chardon.
Hayes, Burchard A.	Toledo.
Haynes, George R.	Toledo.
Heinlein, J. C.	Bridgeport.
Henderson, W. O.	Columbus.
Herrick, Frank R.	Cleveland.

Herrick, G. E.	Cleveland.
Herron, John W.	Cincinnati.
Hertenstein, Fred	Cincinnati.
Hines, Clark B.	Belleville.
Hogsett, F. H.	Cleveland.
Holbrook, Ralph S.	Toledo.
Hollingsworth, J. W.	St. Clairsville.
Hollingsworth, D. A.	Cadiz.
Holmes, J. T.	Columbus.
Hopkins, E. H.	Cleveland.
Houck, Lewis B.	Mt. Vernon.
Howland, Paul	Cleveland.
Hoyt, James H.	Cleveland.
Hubbard, Wm. H.	Defiance.
Hughes, Ivor	Columbus.
Huling, Cyrus	Columbus.
Hull, Linn W.	Sandusky.
Hunt, Samuel F.	Cincinnati.
Hunter, Hale	Urbana.
Huntsberger, I. N.	Toledo.
Hutchins, Francis E.	Warren.
Ivers, J. A.	McConnelsville.
Jackson, Wm. H.	Cincinnati.
Jahn, Carl G.	Columbus.
James, Francis B.	Cincinnati.
James, W. D.	Waverly.
Jenny, Herbert	Cincinnati.
Jerome, F. J.	Cleveland.
Jewett, L. M.	Athens.
Johnston, A. R.	Ironton.
Johnson, Isaac	Wooster.
Johnson, Ben. W.	Elyria.
Johnson, E. G.	Elyria.

Johnson, Simeon M.	Cincinnati.
Johnston, R. W.	Galion.
Johnston, Hollis C.	Gallipolis.
Johnston, J. R.	Youngstown.
Jones, John David	Newark.
Jones, Richard, Jr.	Columbus.
Jones, Asa W.	Youngstown.
Jones, Paul	Columbus.
Keifer, J. Warren	Springfield.
Keifer, Wm. W.	Springfield.
Kennedy, Edwin M.	McConnelsville.
Kennedy, James	Youngstown.
Kibler, Edward	Newark.
King, Edmund B.	Sandusky.
King, H. E.	Toledo.
Kingsbury, B. B.	Defiance.
Kirby, Geo. P.	Toledo.
Kline, Virgil P.	Cleveland.
Kohler, G. C.	Akron.
Kohler, Jacob A.	Akron.
Kohn, Samuel	Toledo.
Koons, W. M.	Mt. Vernon.
Krauss, W. C. G.	Ottawa.
Krumm, Alex. W.	Columbus.
Kumler, John F.	Toledo.
Laning, J. F.	Norwalk.
Laubie, Peter A.	Salem.
Lawrence, William	Bellefontaine.
Leedom, John S.	Urbana.
Leidig, John W.	Mansfield.
Levering, Frank O.	Mt. Vernon.
Lewis, Charles T.	Toledo.
Lewis, P. P.	Steubenville.

Limbert, L. F.	Dayton.
Lincoln, George	London.
Linn, T. P.	Columbus.
Littleford, Wm.	Cincinnati.
Locke, John L.	Cambridge.
Long, Geo. S.	Troy.
Loomis, John Cooper	Tiffin.
Loree, John W.	Celina.
Lott, John L.	Tiffin.
Maline, William A.	Youngstown.
Marshall, R. D.	Dayton.
Martin, Chas. D.	Lancaster.
Martin, Oscar T.	Springfield.
Marvin, U. L.	Akron.
Mathers, Hugh T.	Sidney.
Matthews, C. B.	Cincinnati.
Matthews, Edwin P.	Dayton.
Maxwell, Lawrence, Jr.	Cincinnati.
May, Manuel	Mansfield.
McBride, C. E.	Mansfield.
McCarter, Edward B.	Columbus.
McCauley, John	Tiffin.
McClure, Wm. T.	Columbus.
McCracken, Geo. W.	Urbana.
McCrystal, John F.	Sandusky.
McElhiney, J. W.	McConnelsville.
McDonnel, T. J.	Toledo.
McGuffey, John G.	Columbus.
McIntire, A. R.	Mt. Vernon.
McKee, Richard	Toledo.
McKinley, Wm.	Washington, D. C.
McKisson, Robert	Cleveland.
McKnight, Joseph R.	Norwalk.

McMahon, Harry H.	Columbus.
McMahon, John A.	Dayton.
Melhorn, Chas. M.	Kenton.
Melchers, Milo	Toledo.
Merrill, A. H.	Toledo.
Millard, I. I.	Toledo.
Miller, Ira H.	Columbus.
Millikin, Thomas	Hamilton.
Minshall, Thaddeus A.	Columbus.
Monnett, F. S.	Bucyrus.
Monnette, O. E.	Bucyrus.
Mooney, W. T.	St. Mary's.
Moore, E. H.	Youngstown.
Moore, Fred'k K.	Cincinnati.
Moore, J. J.	Ottawa.
Morrill, Henry A.	Cincinnati.
Morris, L. W.	Toledo.
Morton, E. C.	Columbus.
Mullins, F. J.	Salem.
Munson, Gilbert D.	Zanesville.
Musser, Harvey	Akron.
Mykrantz, H. A.	Ashland.
Nash, George K.	Columbus.
Nicoll, George A.	Ashland.
Noble, Warren P.	Tiffin.
Norris, C. H.	Marion.
Northrup, Chas. S.	Toledo.
Northway, Stephen A.	Jefferson.
Norton, M. G.	Cleveland.
Nye, D. J.	Elyria.
O'Hara, Joseph W.	Cincinnati.
Oldham, F. F.	Cincinnati.
Osborne, C. W.	Painesville.

Overturf, N. F.	Delaware.
Otis, E. P.	Akron.
Owen, Selwyn N.	Columbus.
Parker, Robert S.	Bowling Green.
Parks, L. K.	Toledo.
Parmenter, W. L.	Lima.
Patterson, F. N.	Ashland.
Patterson, J. C.	Dayton.
Patterson, M. R.	Columbus.
Peters, Geo. S.	Columbus.
Phinney, Arthur	Sandusky.
Pike, Louis H.	Toledo.
Piper, L.	Marysville.
Plummer, John L.	Springfield.
Pomerene, Atlee	Canton.
Pomerene, Frank E.	Coshocton.
*Pomerene, Julius C.	Coshocton.
Pomerene, W. R.	Coshocton.
Potter, E. D., Jr.	Toledo.
Pratt, Charles	Toledo.
Price, James L.	Lima.
Probasco, H. R.	Glendale.
Prophet, H. S.	Lima.
Pugsley, Isaac P.	Toledo.
Ramsey, Robert	Cincinnati.
Randall, E. O.	Columbus.
Ranney, Henry C.	Cleveland.
Read, W. H. A.	Toledo.
Reagan, James P.	Napoleon.
Rehm, Ernest	Cincinnati.
Richie, Walter B.	Lima.
*Rickenbaugh, Frank W.	Toledo.

*Deceased.

Ricks, A. J.	Cleveland.
Riley, George B.	Cleveland.
Ritchie, J. M.	Toledo.
Ritchie, Edwards	Cincinnati.
Rohn, J. K.	Tiffin.
Roelker, Frederick G.	Cincinnati.
Royer, J. C.	Tiffin.
Russell, L. A.	Cleveland.
Ryan, Daniel J.	Columbus.
Sage, George R.	Lebanon.
Sams, Oliver N.	Hillsboro.
Sanderson, T. W.	Youngstown.
Sanford, Henry C.	Akron.
Sater, J. E.	Columbus.
Sayler, John R.	Cincinnati.
Schaufelberger, J. W.	Tiffin.
Shatzel, J. E.	Bowling Green.
Scribner, Harvey	Toledo.
Scroggs, C. J.	Bucyrus.
Seiders, C. A.	Toledo.
Seney, Henry M.	Kenton.
Seward, C. W.	Newark.
Shauck, John A.	Columbus.
Sheets, J. M.	Ottawa.
Sheppard, A. J.	Zanesville.
Sinks, Frederick N.	Columbus.
Smalley, Allen	Upper Sandusky.
Smith, A. L.	Toledo.
Smith, J. Herman	Piqua.
Smith, Barton	Toledo.
Smith, Halbert D.	Cleveland.
Smith, P. M.	Lisbon.
Smith, J. M.	Lebanon.

Smith, H. Lindale	Cleveland.
Smith, P. C.	Circleville.
Smith, Rufus B.	Cincinnati.
Snook, W. H.	Paulding.
Solders, G. B.	Cleveland.
Southard, E. B.	Toledo.
Southard, F. H.	Zanesville.
Sowers, Daniel H.	Columbus.
Spear, William Thomas	Columbus.
Spiegel, F. S.	Cincinnati.
Spriggs, John M.	Dayton.
Squire, Andrew	Cleveland.
Stearns, Arthur A.	Hillsboro.
Steel, S. F.	Fostoria.
Steele, Thos. E.	Columbus.
Stephens, Jesse	Fostoria.
Stewart, Chase	Springfield.
Stewart, Gilbert H.	Columbus.
Stivers, Frank A.	Ripley.
Stockdale, John F.	Cambridge.
Stoehr, Oscar	Cincinnati.
Stuart, Edwin W.	Akron.
Stueve, C. A.	Wapakoneta.
Stull, John M.	Warren.
Sullivan, John D.	Columbus.
Sullivan, Jno. J.	Warren.
Sullivan, Theodore	Troy.
Sumner, Charles E.	Toledo.
Swayne, F. B.	New York City.
Swayne, Noah H., Jr.	Toledo.
Sweeney, J. R.	Steubenville.
Talcott, W. E.	Cleveland.

Taft, Wm. H.	Cincinnati.
Taylor, Edward L., Jr.	Columbus.
Thatcher, Charles A.	Toledo.
Thayer, A. A.	Canton.
Thompson, A. C.	Portsmouth.
Thompson, W. H.	Mt. Vernon.
Thurston, Johnston	Toledo.
Tibbals, Newell D.	Akron.
Tobias, James C.	Bucyrus.
Tolerton, E. W.	Toledo.
Tracy, Thomas	Toledo.
Treadway, Francis	Cleveland.
Troup, James O.	Bowling Green.
Twing, Eldred L.	Toledo.
Tyler, Justin H.	Napoleon.
Upson, Wm. H.	Akron.
Van Campen, H.	Toledo.
VanDeman, John N.	Washington C. H.
Volrath, Edward	Bucyrus.
Wagner, W. S.	Tiffin.
Waight, J. B.	Mt. Vernon.
Waite, Richard	Toledo.
Wald, Gustavus H.	Cincinnati.
Warrington, J. W.	Cincinnati.
Watson, David K.	Columbus.
Watson, James	Columbus.
Weller, H. J.	Tiffin.
Welker, Martin	Wooster.
Wells, Frank L.	Wellsville.
Werner, Gustav R.	Cincinnati.
West, William H.	Bellefontaine.
Westfall, R. E.	Columbus.
Wheeler, S. S.	Lima.

Wheeler, T. W.	Toledo.
White, Henry C.	Cleveland.
White, John G.	Cleveland.
Wickham, E. M.	Delaware.
Wightman, C. D.	Medina.
Wiggins, Willis H.	Chillicothe.
Wildman, Samuel A.	Norwalk.
Willard, Frederick B.	Toledo.
Williams, M. J.	Columbus.
Williams, C. C.	Columbus.
Williamson, Samuel E.	Cleveland.
Wilson, Charles G.	Toledo.
Wilson, Gideon	Cincinnati.
Wilson, James P.	Youngstown.
Winn, Simeon M.	Zanesville.
Wolcott, Herbert W.	Cleveland.
Woolf, A. J.	Youngstown.
Workum, David J.	Cincinnati.
Wright, D. Thew	Cincinnati.
Young, George R.	Dayton.
Young, W. E.	Akron.
Zehring, Augustus	Cleveland.
Zimmerman, John L.	Springfield.

Members Ex-Officio.

Hon. William H. Taft,	Cincinnati.
Hon. George R. Sage,	Lebanon.
Hon. Martin Welker,	Wooster.
Hon. Edward F. Bingham,	Washington, D. C.
Hon. A. J. Ricks,	Cleveland.
Hon. William W. Boynton,	Cleveland.
Hon. J. P. Bradbury,	Pomeroy.
Hon. J. F. Burket,	Findlay.
Hon. Franklin J. Dickman,	Cleveland.
Hon. John H. Doyle,	Toledo.
Hon. Martin D. Follett,	Marietta.
Hon. Moses M. Granger,	Zanesville.
Hon. John McCauley,	Tiffin.
Hon. Charles D. Martin,	Lancaster.
Hon. T. A. Minshall,	Chillicothe.
Hon. George K. Nash,	Columbus.
Hon. Selwyn N. Owen,	Columbus.
Hon. John A. Shauck,	Dayton.
Hon. William Thomas Spear,	Warren.
Hon. William H. Upson,	Akron.
Hon. William H. West,	Bellefontaine.
Hon. M. J. Williams,	Washington C. H.
Hon. D. Thew Wright,	Cincinnati.
Hon. Wm. McKinley,	Washington, D. C.
Hon. Eli S. Hammond,	Memphis, Tenn.
Hon. A. C. Thompson,	Portsmouth.

Members Arranged by Judicial Districts.

FIRST.

Black, L. C.	Cincinnati.
Cleveland, Harlan	Cincinnati.
Cox, Joseph	Cincinnati.
Creed, Jerome D.	Cincinnati.
Dempsey, Edward J.	Cincinnati.
Ellis, Wade H.	Cincinnati.
Ferris, Aaron A.	Cincinnati.
Follett, John F.	Cincinnati.
Greve, Chas. D.	Cincinnati.
Groesbeck, Herman	Cincinnati.
Harper, J. C.	Cincinnati.
Harrison, Jos. T.	Cincinnati.
Harmon, Judson	Cincinnati.
Herron, John W.	Cincinnati.
Hertenstein, Fred	Cincinnati.
Hunt, Samuel F.	Cincinnati.
Jackson, Wm. H.	Cincinnati.
James, Francis B.	Cincinnati.
Jenney, Herbert	Cincinnati.
Johnson, Simeon M.	Cincinnati.
Littleford, Wm.	Cincinnati.
Matthews, C. B.	Cincinnati.
Maxwell, Lawrence, Jr.	Cincinnati.
Moore, Fred'k W.	Cincinnati.
Morrill, Henry A.	Cincinnati.
Oldham, F. F.	Cincinnati.

O'Hara, Joseph W.	Cincinnati.
Probasco, H. R.	Glendale.
Ramsey, Robert	Cincinnati.
Rehm, Ernest	Cincinnati.
Riley, George B.	Cincinnati.
Ritchie, Edwards	Cincinnati.
Roelker, Frederick G.	Cincinnati.
Sayler, John R.	Cincinnati.
Smith, Rufus B.	Cincinnati.
Spiegel, F. S.	Cincinnati.
Stoehr, Oscar	Cincinnati.
Taft, Wm. H.	Cincinnati.
Wald, Gustavus H.	Cincinnati.
Warrington, J. W.	Cincinnati.
Werner, Gustav R.	Cincinnati.
Wilson, Gideon	Cincinnati.
Workum, David J.	Cincinnati.
Wright, D. Thew	Cincinnati.

SECOND.

Alread, J. I.	Greenville.
Andrews, Allen	Hamilton.
Bowman, D. W.	Greenville.
Broomhall, A. F.	Troy.
Clark, John C.	Greenville.
Crow, H. M.	Urbana.
Dustin, C. W.	Dayton.
Fisher, Elam	Eaton.
Frank, John L. H.	Dayton.
Gilbert, Wm. H.	Troy.
Gunckel, L. B.	Dayton.
Hagan, F. M.	Springfield.
Hartman, Val.	Greenville.

Hunter, Hale	Urbana.
Keifer, Wm. W.	Springfield.
Keifer, J. Warren	Springfield.
Leedom, John S.	Urbana.
Limbert, L. F.	Dayton.
Long, Geo. S.	Troy.
Marshall, R. D.	Dayton.
Martin, Oscar T.	Springfield.
Matthews, Edwin P.	Dayton.
McCracken, Geo. W.	Urbana.
McMahon, John A.	Dayton.
Millikin, Thomas	Hamilton.
Patterson, J. C.	Dayton.
Plummer, John L.	Springfield.
Sage, Geo. R.	Lebanon.
Shauck, John A.	Dayton.
Smith, J. Herman	Piqua.
Smith, J. M.	Lebanon.
Spriggs, John M.	Dayton.
Stewart, Chase	Springfield.
Sullivan, Theodore	Troy.
Young, George R.	Dayton.
Zimmerman, John L.	Springfield.

THIRD.

Boehmer, Amos	Ottawa.
Boothman, M. M.	Bryan.
Brice, Herbert L.	Lima.
Cable, Davis J.	Lima.
Day, James H.	Celina.
Eastman, E. R.	Ottawa.
Emery, Thomas	Toledo.

Hackendorn, W. E.	Indianapolis, Ind.
Hubbard, Wm. H.	Defiance.
Kingsbury, B. B.	Defiance.
Krauss, W. C. G.	Ottawa.
Leidig, John W.	Mansfield.
Loree, John W.	Celina.
Mathers, Hugh T.	Sidney.
Mooney, W. T.	St. Mary's.
Moore, J. J.	Ottawa.
Parmenter, W. L.	Lima.
Prophet, H. S.	Lima.
Price, James L.	Lima.
Reagan, James P.	Napoleon.
Richie, Walter B.	Lima.
*Rickenbaugh, Frank W.	
Sheets, J. M.	Ottawa.
Snook, W. H.	Paulding.
Stueve, C. A.	Wapakoneta.
Tyler, Justin H.	Napoleon.
Wheeler, S. S.	Lima.

FOURTH.

Ammerman, Chas.	Barberton.
*Angell, E. A.	Cleveland.
Austin, James, Jr.	Toledo.
Ashley, Charles S.	Toledo.
Baker, Rufus H.	Toledo.
Barber, Jason A.	Toledo.
Beavis, William H.	Cleveland.
Belford, Irvin	Toledo.
Bentley, Chas. S.	Cleveland.

*Deceased.

Benner, C. C.	Akron.
Bierly, Thos. N.	Toledo.
Boynton, W. W.	Cleveland.
Brewer, A. T.	Cleveland.
Brinsmade, Allen T.	Cleveland.
Brumback, O. S.	Toledo.
Bryan, Frederick C.	Akron.
Buckland, H. S.	Fremont.
Bunts, Harry C.	Cleveland.
Bunker, Henry S.	Toledo.
Burton, Theodore E.	Cleveland.
Carr, W. F.	Cleveland.
Carpenter, Frank B.	Cleveland.
Chapman, H. B.	Cleveland.
Chase, George A.	Toledo.
Cobb, C. S.	Akron.
Cook, E. S.	Cleveland.
Craig, G. Ray	Norwalk.
Crane, A. P.	Toledo.
Cummings, Jos. W.	Toledo.
Cushing, William E.	Cleveland.
Dempsey, James H.	Cleveland.
Dewey, Thomas P.	Clyde.
Dickey, Moses R.	Cleveland.
Dickman, F. J.	Cleveland.
Doyle, John H.	Toledo.
Duff, John	Oak Harbor.
Dustin, Alton C.	Cleveland.
Elliott, Lee	Seville.
Finch, J. D.	Clyde.
Force, Manning F.	Sandusky.
Fuller, R.	Toledo.
Fuller, Clifford W.	Cleveland.

Garfield, Harry R.	Cleveland.
Garfield, James R.	Cleveland.
Geddes, F. L.	Toledo.
Goff, Frank H.	Cleveland.
Gordon, William	Port Clinton.
Grant, Charles R.	Akron.
Greer, J. T.	Toledo.
Groot, Geo. A.	Cleveland.
Guenther, W. G.	Cleveland.
Hale, John C.	Cleveland.
Hamilton, Jas. K.	Toledo.
Harris, Wm. H.	Toledo.
Hayes, Burchard A.	Toledo.
Haynes, George R.	Toledo.
Herrick, Frank R.	Cleveland.
Herrick, G. E.	Cleveland.
Hogsett, F. H.	Cleveland.
Hopkins, E. H.	Cleveland.
Hoyt, James H.	Cleveland.
Holbrook, Ralph S.	Toledo.
Howland, Paul	Cleveland.
Hull, Linn W.	Sandusky.
Huntsberger, I. N.	Toledo.
Jerome, F. J.	Cleveland.
Johnson, Ben. W.	Elyria.
Johnson, E. G.	Elyria.
King, Edmund B.	Sandusky.
King, H. E.	Toledo.
Kirby, Geo. P.	Toledo.
Kline, Virgil P.	Cleveland.
Kohn, Samuel	Toledo.
Kohler, G. C.	Akron.
Kohler, Jacob A.	Akron.

Kumler, John F.	Toledo.
Laning, J. F.	Norwalk.
Lewis, Charles T.	Toledo.
Marvin, U. L.	Akron.
McCrystal, John F.	Sandusky.
McDonnel, T. J.	Toledo.
McKisson, Robert	Cleveland.
McKee, Richard	Toledo.
McKnight, Joseph R.	Norwalk.
Melchers, Milo	Toledo.
Merrill, A. H.	Toledo.
Millard, I. I.	Toledo.
Morris, L. W.	Toledo.
Musser, Harvey	Akron.
Northrup, Chas. S.	Toledo.
Norton, M. G.	Cleveland.
Nye, D. J.	Elyria.
Otis, E. P.	Akron.
Parks, L. K.	Toledo.
Phinney, Arthur	Sandusky.
Pike, Louis H.	Toledo.
Potter, E. D., Jr.	Toledo.
Pratt, Charles	Toledo.
Pugsley, Isaac P.	Toledo.
Ranney, Henry C.	Cleveland.
Read, W. H. A.	Toledo.
Ricks, A. J.	Cleveland.
Rickenbaugh, F. W.	Toledo.
Riley, Geo. B.	Cleveland.
Ritchie, J. M.	Toledo.
Russell, L. A.	Cleveland.
Sanford, Henry C.	Akron.

Scribner, Harvey	Toledo.
Seiders, C. A.	Toledo.
Smith, A. L.	Toledo.
Smith, Barton	Toledo.
Smith, Halbert D.	Cleveland.
Smith, H. Lindale	Cleveland.
Smith, Barton	Toledo.
Southard, E. B.	Toledo.
Solders, Geo. B.	Cleveland.
Squire, Andrew	Cleveland.
Stearns, Arthur A.	Cleveland.
Stuart, Edwin W.	Akron.
Sumner, Charles E.	Toledo.
Swayne, Noah H., Jr.	Toledo.
Talcott, W. E.	Cleveland.
Thatcher, Charles A.	Toledo.
Thurston, Johnston	Toledo.
Tibbals, Newell D.	Akron.
Tolerton, E. W.	Toledo.
Tracy, Thomas	Toledo.
Treadway, Francis	Cleveland.
Twing, Ildred L.	Toledo.
Upson, Wm. H.	Akron.
Van Campen, H.	Toledo.
Waite, Richard	Toledo.
Wheeler, T. W.	Toledo.
White, Henry C.	Cleveland.
White, John G.	Cleveland.
Wightman, C. D.	Medina.
Wildman, Samuel A.	Norwalk.
Williamson, Samuel E.	Cleveland.
Willard, Frederick B.	Toledo.
Wilson, Charles G.	Toledo.

Wolcott, Herbert W.	Cleveland.
Young, W. E.	Akron.
Zehring, Augustus	Cleveland.

FIFTH.

Abernethy, Isaac N.	Circleville.
Albery, F. F. D.	Columbus.
Albery, H. B.	Columbus.
Anderson, Jas. H.	Columbus.
Arnold, H. B.	Columbus.
Aubert, Chas.	Columbus.
Babcock, W. E.	Columbus.
Badger, D. C.	Columbus.
Black, Samuel L.	Columbus.
Bingham, Edw. F.	Washington, D. C.
Booth, H. J.	Columbus.
Brinker, E. W.	Columbus.
Burr, Charles E., Jr.	Columbus.
Chapin, John W.	Columbus.
Collins, James H.	Columbus.
Crosbie, John J.	Columbus.
Crum, Ira H.	Columbus.
Cunningham, Seymour	Chillicothe.
Douglas, Albert	Chillicothe.
Dennis, Jerry	Columbus.
Daugherty, Harry M.	Washington C. H.
Dillon, Edmund B.	Columbus.
Dyer, Jos. H.	Columbus.
Folsom, Henry P.	Circleville.
Galloway, Tod B.	Columbus.
Garrett, Geo. L.	Hillsborough.
Gilmore, C. R.	Columbus.

Harrison, Richard A.	Columbus.
Henderson, W. O.	Columbus.
Holmes, J. T.	Columbus.
Hughes, Ivor	Columbus.
Huling, Cyrus	Columbus.
Jahn, Carl G.	Columbus.
Jones, Richard, Jr.	Columbus.
Jones, Paul	Columbus.
Krumm, Alex. W.	Columbus.
Linn, T. P.	Columbus.
Lincoln, George	London.
Miller, Ira H.	Columbus.
Minshall, Thaddeus	Columbus.
McCarter, Edward B.	Columbus.
McClure, Wm. T.	Columbus.
McGuffey, John G.	Columbus.
McMahon, H. H.	Columbus.
Morton, E. C.	Columbus.
Nash, George K.	Columbus.
Owen, Selwyn N.	Columbus.
Patterson, M. R.	Columbus.
Peters, Geo. S.	Columbus.
Randall, E. O.	Columbus.
Ryan, Daniel J.	Columbus.
Sams, Oliver N.	Hillsboro.
Sater, J. E.	Columbus.
Sinks, Frederick N.	Columbus.
Smith, P. C.	Hillsboro.
Sowers, Daniel H.	Columbus.
Steele, Thos. E.	Columbus.
Steel, S. F.	Hillsboro.
Stewart, Gilbert H.	Columbus.
Sullivan, John D.	Columbus.

Taylor, Edward L., Jr.	Columbus.
VanDeman, John N.	Washington C. H.
Watson, David K.	Columbus.
Watson, James	Columbus.
Westfall, R. E.	Columbus.
Wiggins, Willis H.	Chillicothe.
Williams, M. J.	Columbus.
Williams, C. C.	Columbus.

SIXTH.

*Allen, David A.	Newark.
Barry, John W.	Mt. Gilead.
Bartlett, Robert T.	Mt. Gilead.
Bell, H. E.	Mansfield.
Black, T. F.	Mansfield.
Brinkerhoff, R., Jr.	Mansfield.
Brucker, Lewis	Mansfield.
Campbell, R. M.	Ashland.
Carpenter, George W.	Delaware.
Cooper, William C.	Mt. Vernon.
Coyner, George	Delaware.
Cummings, S. G.	Mansfield.
Devor, Wm. T.	Ashland.
Douglass, S. M.	Mansfield.
Flory, Chas. L.	Newark.
Fulton, J. B.	Newark.
Funck, Ross W.	Wooster.
Hines, Clark B.	Belleville.
Houck, Lewis B.	Mt. Vernon.
Johnson, Isaac	Wooster.
Jones, John David	Newark.
Kibler, Edward	Newark.

*Deceased.

Koons, W. M.	Mt. Vernon.
Levering, Frank O.	Mt. Vernon.
May, Manuel	Mansfield.
Mykrantz, H. A.	Ashland.
McBride, C. E.	Mansfield.
McIntire, A. R.	Mt. Vernon.
Nicoll, George A.	Ashland.
Overturf, N. F.	Delaware.
Patterson, F. N.	Ashland.
Pomerene, Frank E.	Coshocton.
Pomerene, W. R.	Coshocton.
*Pomerene, Julius C.	Coshocton.
Seward, C. W.	Mt. Vernon.
Stivers, Frank A.	Ripley.
Thompson, W. H.	Mt. Vernon.
Waight, J. B.	Mt. Vernon.
Welker, Martin	Wooster.
Wickham, E. M.	Delaware.

SEVENTH.

Anderson, Julius L.	Ironton.
Bannon, J. W.	Portsmouth.
Bradbury, J. P.	Pomeroy.
Cherrington, Thomas	Ironton.
Collings, Henry	Manchester.
Evans, Nelson W.	Portsmouth.
Follett, Martin D.	Marietta.
Follett, A. D.	Marietta.
Grosvenor, Charles H.	Athens.
James, W. D.	Waverly.
Jewett, L. M.	Athens.

*Deceased.

Johnston, A. R.	Ironton.
Johnston, Hollis C.	Gallipolis.
Thompson, A. C.	Portsmouth.

EIGHTH.

Adams, John J.	Zanesville.
Granger, Moses M.	Zanesville.
Granger, Sherman M.	Zanesville.
Cook, J. M.	Steubenville.
Crew, W. B.	McConnelsville.
Dunbar, J.	Steubenville.
Gallaher, J. A.	Bellaire.
Gregg, Henry,	Steubenville.
Heinlein, J. C.	Bridgeport.
Hollingsworth, D. A.	Cadiz.
Hollingsworth, J. W.	St. Clairsville.
Ivers, J. A.	McConnelsville.
Kennedy, Edwin M.	McConnelsville.
Lewis, P. P.	Steubenville.
Locke, John L.	Cambridge.
McElhiney, J. W.	McConnelsville.
Munson, Gilbert D.	Zanesville.
Sheppard, A. J.	Zanesville.
Southard, F. H.	Zanesville.
Stockdale, J. F.	Cambridge.
Sweeney, J. R.	Steubenville.
Winn, Simeon M.	Zanesville.

NINTH.

Anderson, William S.	Youngstown.
Arrel, George F.	Youngstown.
Baldwin, Frank L.	Massillon.

Bow, Charles C.	Canton.
Boyle, W. C.	Salem.
Brooks, Chas. T.	Salem.
Brooks, J. Twing	Salem.
Burrows, J. B.	Painesville.
Cadwell, J. P.	Jefferson.
Clark, James J.	Canton.
Clark, A. H.	East Liverpool.
Cox, Allen M.	Conneaut.
Day, William R.	Canton.
Fillius, Charles	Warren.
Gilmer, Thomas H.	Warren.
Gilmer, T. I.	Warren.
Hall, Theodore	Ashtabula.
Harter, Henry W.	Canton.
Harris, H. W.	Alliance.
Hathaway, I. N.	Chardon.
Hutchins, Francis E.	Warren.
Johnston, J. R.	Youngstown.
Jones, Asa W.	Youngstown.
Kennedy, James	Youngstown.
Laubie, Peter A.	Salem.
Maline, William A.	Youngstown.
Moore, E. H.	Youngstown.
Mullins, F. J.	Salem.
Northway, Stephen A.	Jefferson.
Osborne, C. W.	Painesville.
Pomerene, Atlee	Canton.
Sanderson, T. W.	Youngstown.
Smith, P. M.	Lisbon.
Spear, William Thomas	Warren.
Stull, John M.	Warren.
Sullivan, John J.	Warren.

Thayer, A. A.	Canton.
Wilson, James P.	Youngstown.
Wells, Frank L.	Wellsville.
Woolf, A. J.	Youngstown.

TENTH.

Beer, Thomas	Bucyrus.
Bennett, S. W.	Bucyrus.
Betts, John E.	Findlay.
Burket, Harlan F.	Findlay.
Burket, Jacob F.	Findlay.
Carey, Robert	Upper Sandusky.
Conley, Thos. F.	Bowling Green.
Doty, John N.	Findlay.
Dunn, Robert	Bowling Green.
Gallinger, Chas.	Bucyrus.
Harris, Stephen R.	Bucyrus.
Johnston, R. W.	Galion.
Lawrence, William	Bellefontaine.
Loomis, John Cooper	Tiffin.
Lott, John L.	Tiffin.
McCauley, John	Tiffin.
Melhorn, Chas. M.	Kenton.
Monnett, F. S.	Bucyrus.
Monnette, O. E.	Bucyrus.
Noble, Warren P.	Tiffin.
Norris, C. H.	Marion...
Parker, Robert S.	Bowling Green.
Piper, L.	Marysville.
Rohn, J. K.	Tiffin.
Royer, J. C.	Tiffin.
Schaufelberger, J. W.	Tiffin.
Scroggs, C. J.	Bucyrus.

Seney, Henry M.	Kenton.
Shatzel, J. E.	Bowling Green.
Smalley, Allen	Upper Sandusky.
Stephens, Jesse	Fostoria.
Tobias, James C.	Bucyrus.
Troup, James O.	Bowling Green.
Volrath, Edward	Bucyrus.
Wagner, W. S.	Tiffin.
Weller, H. J.	Tiffin.
West, William H.	Bellefontaine.

The next Meeting of the Association will be held commencing July 11, 1899.

NOTE. The place of meeting will be fixed by the Executive Committee at its meeting in January and will be announced thereafter.

APPENDIXES.

[I.]

ADDRESS OF THE PRESIDENT.

Comrades and Friends:

My inability to attend your last meeting makes this the first opportunity to express my appreciation of the honor you then did me. I embrace it most heartily. Home honors, like the flowers which spring up in one's native soil, have a charm which is all their own.

The legal history of the state during the past year affords few subjects of interest great or general enough to call for comment. And what surer sign is there that affairs, public and private, are in the sound and orderly condition which our government was founded to produce and maintain.

The administration of justice has gone smoothly on, like the flow of a placid river. The system of judicial irrigation made operative last winter, by the law for paying the expenses of judges detailed for duty out of their own circuits, has already relieved the situation in the first circuit, and will permanently increase the effectiveness of the intermediate appellate courts which Ohio seems bound to have. A new reason for their existence is given by the law which makes them final in cases not involving more than three hundred dollars. This limit will no doubt be increased when experience shall have shown lawyers and litigants that it is to their interest, as well as to that of the public, to have a speedy end of litigation.

The Supreme Court has made good progress with its crowded docket, in spite of impediments to divisional work caused by lack of proper accommodations; but the increasing number of

decisions without report causes general discontent. There is some comfort as well as instruction in knowing why one's case has gone against him; and the necessity of giving reasons is not without salutary possibilities to all who have controversies to decide. At least a brief statement might well be made in all but the few trivial cases which find their way to the Supreme Court. This is required by law in some states.

In *Mason* v. *The State*, the enforcement of the recent law to prevent corrupt practices at elections was sustained. The fact that the officer deposed was promptly re-elected in no wise detracts from the public importance of that decision. It merely shows the low political tone which prevails in many quarters, especially in our cities, and proves that such evils cure slowly and not by legislation alone. It is a warning, too. No lover of our institutions can afford not to resent promptly and effectively the constant attempts to break down and discredit every effort to extend to the public service the rules which common experience shows to be necessary for the proper conduct of all affairs.

Lufkin Rule Co. v. *Fringeli*, re-establishes the sound rule of the early Ohio cases concerning agreements in restraint of trade. I say re-establishes because it has become somewhat the fashion to consider obsolete whatever is old.

Almost at the same time came the act to define, prevent and punish trusts and combinations. Until recently the many experiments in dealing with this growing and important subject have accomplished little. One of the chief difficulties has been to obtain proof. This law seeks to meet it by permitting the nature of the enterprise to be shown by evidence of common repute. This is certainly a bold stroke in penal legislation, which will doubtless raise the question whether in such a case the accused is confronted with the real witnesses against him, reputation being merely the result of hearsay and the offense not consisting in merely having the reputation. Much discussion may be

expected concerning the proper application of other parts of this law. Its operation will be watched with general interest.

It reminds one of the famous omission of parricide from the list of crimes under Roman law, to find in ours, for the first time, an act to prevent the neglect and abandonment of parents by their children. The penalty is imprisonment from three months to one year, with a right to suspension of sentence on giving bond for the future discharge of filial duty.

The anti-preference law, that providing for the judicial sale of equities of redemption, and the repeal of the exemption of paper soldiers from service on juries, are examples of wise legislation.

In view of the many bad measures proposed, the legislature is entitled to much credit for what it did not do.

Recent events have brought forward matters of broader import than our state laws and decisions to which custom directs a part at least of the President's address. These matters affect us none the less because they are common to all citizens everywhere. They have peculiar interest for lawyers, whose familiarity with principles of government imposes an especial duty to the public with respect to questions which involve them.

Such questions can never properly become the subject of partisan issue. For lawyers, at least, the true scope and meaning of the Constitution cannot be settled by political declaration, but are to be sought and found the same as all other truth.

We have made war on a ground so unusual that there is scarcely a precedent. That ground was so high and so consistent with our ideas that I am not ready to deny that, under all the circumstances, we were justified in making a precedent. But we knew that, for various reasons, we were liable to be suspected of covetousness lurking behind our professed motives, and to be accused of making a pretext rather than a precedent. The war resolutions, therefore, which were passed almost without dissent

and approved without hesitation, were made expressly to declare that we did not covet our neighbor's lands from which we demanded her withdrawal.

That neighbor, thus made our enemy, has, scattered over the globe, the remnants of her great possessions. It was of course proper to attack her in any of these as well as in Cuba. The victory which Commodore Dewey promptly won seemed to bring within our grasp a large group of inhabited islands, nearly 8,000 miles away, and to show that still others might be had for the taking.

Forthwith, before we had conquered a foot of Spanish soil, it was declared by many for whose statements we are held in a measure accountable that we shall keep whatever we take. We must seize the dominion from which we thrust Spain, and become the ruler of numerous and distant peoples of unkindred race and tongue.

Various pretexts are suggested for escape from our disclaimer of territorial cupidity. It applied to Cuba only. It merely expressed our intentions at the time, subject to change. Spain did not promptly yield, but persists in pretending she is making war. The declaration was of no consequence, any way, because it was voluntary and without consideration.

If, without seeming to discredit our country, we may assume that she will countenance tricks of special pleading against her solemn, self-assumed obligation of honor, or if we may suppose that circumstances will arise to release her from it in the judgment of mankind, it becomes our duty to consider the action proposed. It involves a radical change in the course the country has followed from the beginning, and is not a matter to be settled by hue and cry. I shall briefly discuss it, not as a question of policy but as one of constitutional right.

No authority to acquire territory, anywhere, is expressly granted. Jefferson thought the book of the constitution had to be

closed while he bought Louisiana. He depended on subsequent approval by an amendment, the form of which he prepared. The Federalists, except Hamilton, agreed with his construction, though they condemned his course.

The purchase of Florida followed, in connection with the fixing of our boundary with Spain west of the Mississippi which extended our domain to the Pacific north of California. Then we annexed Texas and by conquest, confirmed by treaty, pushed our frontier southward. Soon after we made the Gadsden purchase from Mexico, giving our present southern boundary. Then we bought Alaska.

The power has been established by general acquiescence in these precedents. The courts have said it is implied from the war and treaty powers. But there has been no occasion to define the limits which are fixed for this, as for all implied powers, by the necessity which alone justifies the implication.

The authority of Congress to provide for the entire government of territory acquired, until it shall be included in a state, has passed the stage of controversy. That to admit new states is express and unquestioned.

Are the e powers absolute, in the sense that they are subject to no sort of restriction? The government may of course sieze and hold any or all of an enemy's dominions, as an act of war. It must govern what it holds, if inhabited. The holding may be prolonged after the war as security or for indemnity. In such cases, as was decided with respect to Mexico, it is still the enemy's country. But may the government make part of our domain any country, no matter where or how settled, and either admit it as a state or, though in the nature of things it can never become a state, proceed to govern it permanently?

Thus far, in every instance, the territory acquired has been on this continent. It has been contiguous, except Alaska which is practically so. It has been actually or virtually uninhabited;

the French, Spanish and Texan settlers had barely clipped the edges of the wilderness here and there. It was plain that our own people would quickly spread over and occupy it. "The future inhabitants will be our sons," said Jefferson.

In the cases of Louisiana, Florida and Texas there were express stipulations for ultimate admission to statehood, inserted at our instance because it was feared the transactions would be invalid without them.

These circumstances were not mere accidents, but indicate, throughout all the precedents of our history, recognized restrictions of the power of acquisition. The precedents which have established the power have fixed its limitations. They are not express. They could not be because the power itself is implied. It is settled by our highest authority that necessary implication is the source of constitutional limitations as well as of powers.

When one gives his agent authority to employ his money and credit and to use his name in one kind of business, he need not forbid the agent to devote them to another. This restriction is always implied. If the agent is set to buy and sell grain, he may not speculate on margins, however certain he may feel of promoting his employer's interests.

By the Constitution the people established for themselves a plan of government. The objects to be effected are clearly set forth. The scope and design of the instrument are plain. They chose agents, for them and in their name, to accomplish such purposes by the exercise of certain powers entrusted to them. Those agents may be false to their trust by using those powers for different ends, or so as to alter the scope and design of the enterprise, as well as by doing what they are not authorized to do at all.

The idea seems to be somewhat common that the obligation to support the Constitution merely refers to the usurpation and not to the abuse or misuse of powers. This error may be partly due

to a misapprehension. Within the sphere assigned to it, the Federal Government is said to have all the attributes of sovereignty. In executive and political affairs the President and Congesss are the Federal Government. The courts cannot question or control what they do, but must accept it in all matters which do not directly affect guaranteed private rights. Other countries are obliged by the essential principles of the law of nations to treat our government as sovereign like themselves. They can not raise questions of its authority, because to do so would be to challenge its sovereignty. Our Constitution is not officially known to other nations.

But this idea of the sovereignty of our government disappears when its relations to the people are involved. Theirs is the only sovereignty, none the less supreme because not always in action.

Whatever the government does in all public and foreign affairs is the act of the nation. The parts of the Constitution which relate to them have no present assurance save in the conscience of the President and Congress. There is eventually an appeal to the people, who can punish but often cannot prevent. What is done may in come cases be undone. The distorted lines of the fundamental law may be set straight again. Until then what is done remains, and we must abide the consequences.

But we are now discussing, on the side of the people, action proposed for servants, not for a sovereign. And the fact that from the nature of government no power is or can be set in immediate control of what those servants do, does not operate to increase their authority, though some seem to think it does. We are beginning to hear a new style of argument—"What are you going to do about it?" Constitutional government can not long endure if its operations be committed to men who see no difference between the right to do a thing and the power to do it, with a good chance.

The plan and purposes of our Union might be entirely perverted by a wrongful use of the powers entrusted to the Federal Government merely to enable it to carry them out.

No limitation is expressed of the war power. May Congress involve us in a war for mere conquest or oppression? Might our forces have been sent to aid Spain instead of the Cubans?

The terms which give the power to make treaties are broad. May we join with Russia and Germany to restore the Bourbons to the throne of France?

The power to admit new states is general. May Congress admit Indian tribes, or Mexico, or the South America republics, or Switzerland, as states of the Union?

The power to dispose of our territory is not restricted in terms. May Congress grant Arizona to Japan, or Oklahoma to China?

These are all extreme cases, but they merely enlarge our view of the subject we are testing.

Surely none of these things could be done consistently with the Constitution. And this is because our government is not absolute even in the exercise of the powers delegated to it, but is bound to use them only to further the design of its founders.

That design was to secure the blessings of liberty to them and their descendants by means of a more perfect Union of the communities founded and to be founded by them on this continent. It is *new* states which may be admitted, not *other* states. They are "The United States of *America*." Their mission is peace. Common defense against invasion and protection against domestic violence are provided. There is no hint of aggression or domination.

The clause "to provide for the general welfare," which is often appealed to, is not mentioned in the body of the Constitution except as one of the purposes for which taxes may be levied. One of the strongest arguments against the adoption of the in-

strument, advanced by George Mason and others, was that this clause gave unlimited authority to employ the powers granted to do whatever Congress might think best for the country. A King's could be no greater. But since Jefferson and Hamilton agreed that it merely related to taxation, no recognized authority has claimed more for it. It was taken from the Articles of Confederation where it certainly had no such royal scope as some have sought to give it in the Constitution.

If those who drew and adopted the Constitution meant to grant the power of acquisition at all, it was only by implication, and every expression, every circumstance of its history, show it was merely to make room at home for our own people—for growth to the visible boundaries which nature marks for every great nation, outside of which it can go only as a conqueror. Mere expansion is not growth. It is only swelling. We may push across the seas, but we cannot grow there. Elephantiasis is not an unknown form of national malady, and has always proved fatal. There are still chapters of English history to be written.

The power to govern territories and that for the admission of new states are joined in a section by themselves. The former was plainly intended as an emergency power only, a mere preliminary of the latter.

This implied authority to acquire, and this express authority to govern after acquisition or to admit to statehood, are the only possible foundation for the new career proposed for our country.

We should have to change both the name and the nature of our nation to admit any state out of America, especially if it be populated by alien races. Few, if any, are now bold enough to advocate this.

To get dominion over strange peoples for the mere purpose of governing them, not admitting them as equals in our family of states, stretching into permanency for that purpose a power meant to be temporary and occasional only and for that reason

left unrestricted, is rightly called an "imperial policy." It would belie and discredit the Declaration of Independence, and convict us of hypocrisy. We cannot under our system govern any people without letting them help govern us. The reaction would be swift and sure. We should see what Patrick Henry meant when he said in his famous resolutions of 1765 that such government of the colonies by Great Britain "has a manifest tendency to destroy British as well as American freedom."

An imperial policy will surely lead some day to an emperor. He may assume some softer name if our sensitiveness survive, as is often the case. But an imperial policy and a republic make a contradiction in terms. The policy must go, or the Emperor in some form must come. The British properly added "Empress of India" to the titles of the Queen. When his office outgrows the descriptive name given him by the Constitution, what shall we call the "President of the United States of America?"

The derision with which such alarms are commonly met will not serve here. A moment's thought will show that our form of government was intended and is adapted for the discharge of its simple and limited ordinary functions at home, with the support and under the eye of a people friendly to it and bound to each other by every tie. Set it to work under conditions just the reverse, and we both invite and multiply all the hazards which have always beset free institutions.

One acquisition will whet the appetite for more, and Asia and Africa have become tempting hunting grounds for the nations. The pride which shrinks from failure will lead to the gradual strengthening of our government for its work abroad. It will not long remain weaker at home, with the Monroe doctrine abandoned as it must be. Weariness of the increased burdens of expense which will be sure to come, the glamour of schemes of private interest artfully given a national aspect, the pressure of emergencies which are likely enough to arise among peoples

under foreign rule and which will be multiplied by the enemies we shall make—all these will unite in appeals not to let mere theories stand in the way of practical results.

That our government could not long remain what it is, follows as effect from cause. We are not political immunes. There are none. The course proposed must be honestly presented as involving an essential change in our institutions and not as a mere matter of policy.

But what are we to do with countries we take? If where our flag is carried in battle it must remain as the emblem of permanent authority, victory will become more perilous than defeat. There is no dishonor in bringing home our victorious banners, as we did from the walls of Mexico. There is dishonor, and danger too, in pulling down the landmarks of the Union. No obligation, legal or moral, prevents our leaving such countries as we find them, or giving their people control of their own affairs, if we think best. Desire only, not duty, suggests the permanent assumption of authority over them.

If we must provide fuel for our ships, we want coal bins not provinces or colonies. We can hold them as property. We need not broaden them into domain. If they must be fortified and guarded so we may fight our way to and from them, let us keep them as England does Gibraltar. She does not have to rule Spain. If we must have purely national property abroad, we can at least keep our politics at home where we can keep a close eye on them.

Congress was authorized merely "to *regulate* commerce." Our ancestors knew commerce can be captured and kept only by better goods and lower prices. Yet it is more than hinted that it would be a proper exercise of this power to conquer foreign nations in order to make them trade with us.

Conquest is even suggested as a means of spreading the Gospel.

Our merchants and missionaries must indeed be protected where interest or duty calls them, and there is ample authority to do it. If for this or any reason we ought now to become more active in the world's affairs, if the precepts of our youth were founded only on our weakness and we should now take counsel of our strength alone, so be it.

But who is authorized to abandon the ocean ramparts with which God has surrounded us, because the inventions of men have made them somewhat less effectual. They will always be our chief defenses while the earth revolves. Our country can be no further from danger than its nearest part. Where is the right found to expose our national honor, pride and welfare in dominions beyond the seas, when they may abide in safety forever in the home which the kindness of nature and the wisdom of our fathers have provided for them?

It is not pleasant to play Cassandra. It is easier to join in the shouting and the dancing of those who seem to think the past is dead and the future assured. But one's duty to his countrymen is to give warning of evil when he believes he detects its approach.

[II]

ADDRESS OF HON. F. J. DICKMAN,

BEFORE THE OHIO STATE BAR ASSOCIATION AT PUT-IN-BAY, OHIO, ON WEDNESDAY, JULY 13, 1898.

Mr. President and Gentlemen of the Ohio State Bar Association:

In looking over the proceedings of our State Bar Association, one will be impressed with the variety and interesting character of the subjects that have, through spoken address, engaged the attention of the members whom professional friendships and the promotion of the objects of the Association have annually brought together. The duties and responsibilities devolving upon the legal profession—the science of jurisprudence with its broad generalization of legal phenomena—the administration of justice, its aims and obstacles—the judicial article of our state constitution and its needed amendment—the encouragement of liberal legal education—the interpretation of laws—the tendency of capital to incorporation in the multiform departments of business—the jury system—the exercise of the pardoning power—divorce reform—codification—the school of Bentham, "the father of the philosophy of jurisprudence"—taxation and its burdensome inequalities—the lives of lawyers who have trodden the high walks of the profession and passed away—these, and kindred subjects belonging to the domain of the law, have been presented to you from time to time, with such affluence of learning, and reason, and large discourse, that I cannot hope to offer any suggestion that is new. And if perchance I should fortunately pick up as a gleaner, a small sheaf of grain

accidentally dropped by the harvesters who have gone before, you may well say with Chaucer:

"Out of the old fieldes,
Cometh al this new corne."

Among the avowed purposes for which our association was formed, we can conceive of none more exalted, of a more crowning dignity, and of greater benefit to society, than that of facilitating the administration of justice. Justice is the corner stone of all good government. It is the vital principle of peace and order among individuals and communities; it quickens the march of human progress, and widens the sphere of human happiness, for it means the recognition of legal obligations, and a strict obedience to law, under whose sanctions men are made to feel safe in life, liberty and property. As long as justice continues to be the settled policy of civil society, there may be sudden and violent changes and revolutions in the state, but a conservative element will be at work to render to every one his due—to protect the rights of the lowest and the highest, that no one may suffer wrong—and to so guard the public good, that in the end it shall in no wise receive detriment.

To aid in the administration of justice is the especial occupation and office, the almost single labor of the lives of those who constitute the legal profession. It was a remark of Merlin, the eminent French jurist, that the origin of this profession is as ancient as the world itself. Wherever men have lived in society, there have necessarily been lawyers, because everywhere ignorance has been largely the heritage of the multitude, and has made them the victims of injustice and tyranny. When thus wronged, the wisest, the most enlightened, and the most courageous of their fellow citizens have been those to whom the people have looked as their protectors and defenders—to whose zeal, talents and intelligence they have necessarily had recourse. It has doubtless occurred to you often that you belong to a body

of men who alone are commissioned to vindicate through the medium of courts of justice, the rights of person and of property which are there to be determined. Your voice alone can be raised in the temple of justice in behalf of those who would seek her responses. The courts of law may be thrown wide open to all sorts and conditions of men, but no one is permitted to select, outside the ranks of the legal profession, whomever he pleases to represent his interests within the guarded precinct. Standing in such relation to the public at large as do the members of our profession, exercising such prerogative of service, and charged with a corresponding trust and responsibility, may I be permitted, during a portion of the passing hour, to turn your thoughts to "The Agency of the Bar and the Bench in Making and Developing the Written and the Unwritten Law."

In the written law we would include those rules of action which derive their force from the sovereign power speaking through constitutions and legislative enactments. By the unwritten law we refer to the common law, and those established principles and maxims of equity, which do not derive their authority from any expression of the will of the legislature, but which being declared, attested, and confirmed in judicial decisions, treatises of learned jurists, and opinions of sages, and being in accord with natural justice and enlightened reason, are adapted by the tribunals to new cases as they arise, and to the changing needs of society.

In surveying these two departments of jurisprudence, it becomes evident that constitutions and statutes form but a small part of what is commonly denominated the law. It would perhaps seem otherwise, for they belong to the province of public law, and embrace the most important relations of the individual to the state. They provide for the distribution of the powers of government, legislative, executive, and judicial. They strengthen the muniments of life, liberty, and property. They

regulate the elective franchise. They take cognizance of civil and criminal procedure, of crimes and offenses. Finance and taxation, education, the descent of real estate, and the distribution of personal estate, the organization of municipalities and other corporations, the public police and economy, all come within the sphere of their operation. But these and other manifestations of the written law are few in number when compared with the almost infinite variety of rights and obligations that are regulated by the private or unwritten law.

The history of those peoples, ancient and modern, that have been pre-eminent for the legal faculty, and have been known as the great law-giving nations, shows that the vast multitude of transactions between subject and subject, as distinct from those between the subject and the state, and which give rise to legal contest, have been determined, not by the rigid enactments of legislative bodies, but through the decisions of judicial tribunals and other sources of the unwritten law. The praises bestowed on the laws of the Twelve Tables of Rome would lead one to think that, as a source of legal principles, they were the perfection of human wisdon. They contained, it is true, the outlines of a system of civil process; they established a legal rate of interest to rescue the plebeians from the usurious exactions of their patrician creditors; and on many important heads of private law they contained express enactments—as, on the powers of the father, on successions, and the rights of ownership and possession. But in the Twelve Tables broad principles were stated in the shortest and most naked manner possible; and as far as we know, no allusion was made to many of the most important parts of the customary law. The *plebiscita* seldom coucerned the laws relating to individuals, and related only to what is technically called constitutional law, and the orders of state. And as to the *senatus consulta*, few of the general laws of the senate are to be found which did not relate to state

affairs. But the chief source of the civil or unwritten law, "which has exhausted so many learned lives and clothed the walls of such spacious libraries," is to be found in the edicts of supreme judges, the *Praetors* of the city—in the decisions and opinions of the *jurisconsults* or sages of the law, and in ancient customs springing from or rather sanctioned by the national will. An historical consideration of the laws of England, and of our own country, from the Anglo-Saxon period down to our own time, will make it apparent that the statute law, while its wonderful growth presents a fearful phenomenon, has played a minor part in English and American jurisprudence, in comparison with the vast and comprehensive body of unwritten law that concerns the common justice—originating in social necessity, and promulgated by the judicial tribunals.

In developing, perfecting, and enforcing this system of written and unwritten law, that it may be all efficient for public and private good—"the very least as feeling its care, and the greatest as not exempted from its power"—the bar and the judiciary are and will always be the most potent instruments. In our fundamental and paramount organic law—Federal and State—we discover the formative influence of the legal profession. The chartered rights of the Colonies found many and fearless advocates among the lawyers. In the Revolution, they took the lead in resisting, and making solemn declaration and protest against the violations of the majesty of the law. In the convention of 1787, which framed the Constitution, the legal guidance of such men as Hamilton, and Madison, and Ellsworth, and Rutledge, and Blair, and Wilson, and Randolph, and Pinckney, and Yates, gave to an anxious people the most elevating hope, and an assurance of that most wonderful work which was to be "struck off by the brain and purpose of man." Conventions that frame state constitutions for submission to the votes of the people, seldom fail to enroll among their members an ample

number of men learned in the law, and zealous in the protection of constitutional guaranties. Fortunate is the republic that possesses an order of men, organized and continuous, and so enlightened and nobly imbued. Their occupation and studies, their habits, intellectual and practical, promote inquiry into human rights, and induce caution, and deliberation, and rational conservatism.

Largely are we indebted to them for the element of conservation which pervades the organic law of the nation and of the states. To adopt the weighty words and fervid rhetoric of the great lawyer, jurist, and publicist of New England: "These constitutions owe to the bar more than their terse and exact expression and systematic arrangements; they owe to it, in part, too, their elements of permanence; their felicitous reconciliation of universal and intense liberty with forms to enshrine and regultions to restrain it; their Anglo-Saxon sobriety and gravity conveyed in the genuine idiom, suggestive of the grandest civil achievements of that unequalled race. To interpret these constitutions, to administer and maintain them, this is the office of our age of the profession. Herein have we somewhat wherein to glory; hereby we come into the class and share in the dignity of founders of states, of restorers of states, of perservers of states." In the several drafts of a Constitution offered to the Federal Convention before the adoption of the present instrument, it was deemed sufficient to provide by sweeping words that the executive should "take care that the laws be duly and faithfully executed," and should take an oath to "faithfully execute the duties or office of President." But the Constitution was ordained and established, in order among other objects to secure the blessings of liberty to posterity; and the framers with a wise precaution saw fit to bind the executive with the further oath, that he would to the best of his ability, "*preserve*, protect, and defend the Constitution."

And that the instrument might not be torn by sacrilegious hands—that the government to be formed under it might be constant as well as imbued with an active principle—its mode of amendment insured caution and prudence and mature deliberation. By devices of profound wisdom a check was put upon the power of the people. By imposing a restraint upon popular impulse, our most cherished institutions were made secure against party changes by bare majorities. In all this we discover a conservatism, and a reverence for fundamental law, natural to a class of men whose daily professional life would keep in their minds' eye the right of *habeas corpus*, trial by jury, the obligation of contracts, *ex post facto* laws, the protection of property by due process of law, freedom of speech and of the press, immunity against unreasonable searches and seizures, the right to peaceably assemble and petition for a redress of grievances, and other individual rights established in the organic law of the nation. And not only was this conservative force exercised in salutary restraint upon the impulses and caprices of the people, but there lay enshrined in the Constitution a department of power, working without violence as the silent processes of nature, which was to keep even the legislature within its boundaries. Well has it been ascribed to the statesmanship of lawyers that we have that decision of the Supreme Court which adjudged, that an act of the legislature contrary to the Constitution is void; and that the judicial department is clothed with the power to ascertain the repugnancy, and to pronounce the legal conclusion; and that to have engraved this great truth of conservatism on the public mind, so that no demagogue will deny it, is an achievement of statesmanship of which centuries may not exhaust all the good.

It is to the bar that we must especially look to confine the written statutory law within the limits of the Constitution. Our legislatures though exercising only a certain portion of the

sovereign power, and created to discharge a trust which has been placed in their hands with well-defined restrictions, are nevertheless too often prone to exaggerate their authority as if clothed with a parliamentary omnipotence. They are for the most part composed of men of diverse avocations, and representing constituencies of which the predominant interests are of a varied character. But in our legislative assemblies there is always a considerable proportion of the members whose occupation is the practice of the law. Many of that class are often of limited knowledge and experience; but none the less, the legislative arena is eagerly sought by them as initiatory to public life. Of such, however, the judiciary committees, than which no committees are of greater importance, are apt to be mainly composed as by natural selection. To those committees are generally referred all measures involving difficult legal questions; and as their reports or recommendations are presumptively entitled to receive respectful consideration, and are in a majority of cases adopted and become laws, the usual consequence is, that our annual volumes of statute law are made the bulky repositories of many enactments in violation of the plainest constitutional requirements. Most of this legislation springs from inexperience and inattention; but some of it is the result of remissness of duty and questionable influence. A sovereign remedy for the evil it may be hard to find, but it will be an auspicious day when the leaders of the bar, eminent for learning, ability, and high character, shall take pride in devoting their time and talents to a reasonable length of service in our state legislatures. It has not always been as in these latter days. We speak not to you as men who have come down from a former generation, but it is the written as well as unrecorded fact, that our legislatures in the past were wont to attract and draw to their deliberations, as to the theatre of their triumphs, the foremost men of the bar, rich in intellectual acquisitions, of princely counsel, and worthy to be pillars

of state. We recently had our attention called anew to the debates in the Virginia House of Delegates on the Madison resolutions of 1798, upon the Alien and Sedition Laws. One cannot read those debates and fail to be struck with the extensive information, enlarged views, and profound wisdom of the lawyers and jurists who led in the discussion, and whose names were soon to become illustrious throughout the state. There was John Taylor, of Caroline, to whose writings upon the government and constitution of the United States, statesmen repair, as to their fountain, "and in their urns draw light." There was Littleton W. Tazewell, and William H. Cabell, and others, who made the House of Delegates a field of distinction for noble contests, and gave to state legislation their best endeavors and highest abilities.

But with the ablest legal counselors among the members in our legislative assemblies, grave doubts are liable to arise, and the most carefully considered measures may fail to stand the test of judicial scrutiny. Extraordinary occasions may demand legislation which may be called in question on the ground of unconstitutionality; and it may become of supreme importance, that all doubt should be removed, if possible, before the enactment of a proposed law. When such emergencies arise, involving taxation, education, and other matters of a general public interest, experience has shown that it would not be inconsistent with a wise public policy, to make it the duty of the judges of the Supreme Court, acting not as a court but as the constitutional advisers of the legislative department, to give opinions upon questions of constitutional validity, in advance or before the final passage of doubtful laws. Such opinions, of course, are not to be thus required upon questions which might arise in the course of judicial administration, in matters then pending.

The Constitution of Massachusetts provides, and the provision stands now as it was originally adopted in 1780, that: "Each

branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the Supreme Judicial Court, upon important questions of law, and upon solemn occasions." In six other states the judges are required to give opinions under like circumstances to the other departments of the government; and the provision, as kept within proper limitation by the judges themselves, has been found to impart new strength to the legislative department, while at the same time restraining it within its constitutional bounds. It must be conceded withal, that the duty of advising the other departments imposes an onerous task upon the judges who are called upon for their opinions, and that too, without the means of hearing counsel set forth and vindicate their respective views of the law, as in a judicial course of proceeding. Certainly we would not under existing conditions exact such additional labor of the judges of the Supreme Court of Ohio, for though toiling from morn to noon, from noon to dewy eve, through the revolving year, they are rewarded with a comparatively beggarly stipend, and it is to be feared that it will take as long to illumine the General Assembly in their behalf, as for a ray of light to reach us from the most distant fixed star.

Devolving as it does upon you whose energies and faculties are devoted to the study, the practice, the making, and the administration of the law, to keep watch and ward over the integrity of the Constitution, and to see that acts of the legislature are in conformity therewith, you will not forget that it is also committed to your care and endeavor, that the written or statute law shall not exercise too great control over the province of the unwritten or private law of the land. There is a natural division of relative rights into public and private—public being those which subsist between the state and the individual, and private being those that exist between private persons. To take cognizance of these two classes of rights, the whole field of the

law may properly be distributed into public and private law. When we take into consideration the immense body of statute law that has grown up, and is continuing to grow in our five and forty states, and that too upon matters of public or *quasi* public concern, we are made to realize the unwisdom of extending the public or written law without limit into the boundless region of private rights, to the exclusion of the unwritten law.

It would be beyond the reach of the human intellect, to frame statutory rules that would cover the vast multitude of disputed cases which daily arise out of transactions among natural and artificial persons. Statutes to be effective must be direct in their sanctions, expressed in clear and precise terms, so as not to lead to conclusions at variance with the intention of the law. If too general in their terms, cases may be brought within them whereby great wrong and injustice may be inflicted, unless avoided by forced and artificial judicial construction; and if too minute and specific in detail, equal injustice may be wrought because of the numerous cases that cannot come within the detailed requirements. Take the different species of bailment; inquire into the mode of their original formation; and then imagine an attempt, in the first instance, to embody in a legislative enactment all the rules and distinctions governing the several forms of that trust. Such a statute, instead of throwing light, would only make darkness visible. "All these diversities," says St. Germain, speaking of the law of bailment, "be granted by secondary conclusions, derived from the law of reason, without any statute made upon that behalf. For if any statute were made therein, I think verily more doubts and questions would arise upon the statutes, than doth now, when they be agreed and adjudged upon the common law." We can hardly form a conception of the mazes in which the legislator would be lost, if ignoring the unwritten law evolved by courts of justice, he should endeavor to compass by statute the infinite questions

growing out of contracts and their interpretation, torts and the assessment of damages, the novelty of inventions and intringement of patents, maritime rights and obligations, and other titles of the law.

The history of the law brings into early view the statute of 27 Henry VIII, commonly called the Statute of Uses, but that statute had its origin in reasons of state, and was finally subverted by the courts of law and equity, and a regular and enlightened system of trusts was gradually formed and established. Bankrupt laws to provide relief to the debtor in cases of inevitable misfortune, belong to the *police* of property rather than to the mode of its enjoyment and use. The Statute of Frauds, in the classes of contracts enumerated, prescribes artificial and disciplinary rules of evidence to produce greater accuracy and caution in the promises and agreements of individuals; but it has been estimated that fifty volumes would scarcely contain the record of the efforts of judges to interpret that statute, and reconcile it with the dictates of justice—the result of an effort to subject the private law to inflexible written rules. Codes of civil procedure that regulate forms and modes of practice, seem destined to supersede in time the machinery of the common law. Society is outgrowing the worn-out forms, subtleties and fictions, and a simplification of procedure is demanded, that the rights of suitors may not be jeopardized in the labyrinth of antiquated lore. Even the parliament of England has departed from the ancient ways and time-honored precedents, and by adopting the Judicature Act has abolished the forms of actions, and fused together law and equity. But in substituting even a new system of civil procedure, would it not be a great gain to the administration of justice, if instead of appointing legislative commissioners, it could be delegated to the judiciary to revise, reform, simplify, and abridge the practice, pleadings, forms and proceedings of the courts? And who so competent thereafter to

alter, amend, or rescind a rule of procedure, as the judges whose every-day observation brings to their knowledge the wants and imperfections of the system? As an apparently perfect machine may need changes to render it operative for producing new results, so old rules of procedure may require modification, and new ones may become necessary, as private law is evolved by judicial decision in cases requiring the announcement of new principles.

A code of civil procedure, however simple and readily comprehended, if subject to constant revision by the legislature, will in time undergo so many changes as almost to pass beyond the recognition of its authors. With additions and amendments to cover questions that will arise in pending and anticipated causes, it may be marred by uncertainties, excrescences, and repugnancies, which at law can be obviated and reconciled only by a resort to the courts for their interpretation and construction. Before the adoption in 1848, of the New York Code of Procedure, framed by a board of commissioners, the litigation arising out of the systems of pleading and practice at common law and in chancery was insignificant when measured by that which afterwards helped to overload the courts of that state. We are told by Mr. James C. Carter, in his memorable address before the Virginia State Bar Association, that the effect of the passage of the New York Code was to throw the whole subject into the hands of the legislature; that amendment, change and revision have since been the constant phenomena; that the enacted body of rules has swollen into unwieldly proportions, and been filled with uncertainties and crudities which perplex the understanding, and try the patience almost beyond endurance; that more than six thousand controversies concerning the unintelligible and shifting system have already been decided by the courts; that the decisions constitute by themselves a library of no small magnitude; that the commentary is many times larger than the pon-

derous text; and that the lawyer is left more uncertain and perplexed than he was at the start.

If a legislative attempt to establish a system of procedure for courts and lawyers leads to such results, how signal must be the failure of any attempt to devise, by a *priori* reasoning, a body of statutes unbending in their operation, that will furnish just rules of decision for all those controversies between individuals, which with their shifting combinations of facts can be determined, not by untractable rules, but only in accordance with certain general principles of evidence, right and expediency, which find easy adaptation in the private or unwritten law. It must be apparent to those who reflect upon the minute and complicated parts of the common law, that it was not in the imagination or judgment of any man, or any set of men, to contrive by deductive process the numerous provisions and nice distinctions by which it is adjusted to the affairs of men, but that they must have been established by insensible degrees, have been formed by gradual accretions, suggested by the ever varying incidents which occur in the vicissitudes of human affairs.

A controversy springs up between two individuals, which not being settled by arbitration, recourse is had to a court of justice. All the learning, research, and argument of contending counsel is brought to bear in elucidation of the doctrines sought to be established. Cases nearly or remotely analogous are critically studied and collated, and under the sanction of reason and authority, a judgment is entered. There is an appeal to a court of last resort, and there, after exhausting every resource to throw additional light upon the questions at issue, a final determination is reached. No one, perhaps, could devise a more reliable method of insuring correctness of decision. A rigid statutory rule might have proved totally inadequate to solve the particular combination of facts and phenomena in the given case, and have led to an absolute failure of justice.

Contemplate the enormous mass of decisions contained in the multitudinous volumes of reports at law and in equity. Where will you find a nobler embodiment of collective legal reason—a wider range of principles, drawn from the experience of practical life and the depths of philosophy, and capable of expansion to meet almost every contention between individuals relating to their personal or property rights? Even Bentham, with all his deep-seated prejudice against the unwritten law, was constrained to say: "Traverse the whole continent of Europe—ransack all the libraries belonging to the jurisprudential systems of the several political states—add the contents all together, you would not be able to compose a collection of cases equal in variety, in amplitude, in clearness of statement—in a word, in all points taken together, in instructiveness—to that which may be seen to be afforded by the collection of English Reports of adjudged cases, on adding them to the abridgements and treatises, by which a sort of order, such as it is, has been given to the contents." It may be asked, who will be able, by and by, to blaze a path through the trackless wilderness of adjudged cases, in searching for the tree of knowledge and the fountain of truth. But we may, upon as good ground, ask the same thing in reference to the English Statutes at Large, in which the barrister with difficulty and labor hard wades through the centuries, gropes his way through involutions and convolutions, a weary journey from the beginning to the end of every clause, and finally grasps the object of his search. Lawyers certainly should not complain of the richness of the mine which it is their business to explore. Their education, training, and mental habitudes fit them for the most abstruse investigations; and if perchance a legal germ should be hidden in dusty parchments, or in the dark pages of the Year Books, we feel assured they would trace it out in the interest of their clients.

Who will regret, who will not rather rejoice, that we have this inexhaustible and available treasury of the unwritten law? It is a monument of wisdom that has grown in accordance with the most approved philosophic method for the discovery of truth. It is the product of an inductive method, which is not limited to physical inquiries, but is the true method of scientific inquiry, universally; and jurisprudence, in its application to man and his jural rights, is an inductive science as much as chemistry or geology. Facts, experiences, and phenomena in an individual case are examined and compared with similar facts, experiences, and phenomena, and the adjudications thereon in analogous cases; a new generalization from particulars is the result, and a new legal principle or development of an old principle is the product of the investigation. But this process of induction cannot be worked out through a legislature, seeking out of the depths of the reason and the imagination, to anticipate and provide for every controversy that may find its way into the courts. The legislature, however, may not be without its useful office in relation to this great body of the unwritten law. How the increasing mass shall be best utilized—how made most accessible in the administration of justice—is a problem of by no means easy solution. Codification within reasonable bounds, limited to what have become the acknowledged verities of the law, but open to amendment and revision with the growth of judicial decisions, has had many and distinguished champions. And yet, in codifying the substance of decisions without strict adherence to their language, it may become difficult in the transmutation to avoid ambiguities and interpretations that beget litigation. The code would fail if made to inflexibly govern all future cases, for the tribunals would be called upon daily to pass upon novel combinations, which could not without legislative amendment be brought within the purview of the rigid terms of the statute. A code

would possess the merit of brevity and condensation, but brevity is sometimes but another word for obscurity, and obscurity is the source from which often flow the bitter waters of strife. We trust that the time is coming, when the law will be digested by learned, able, and laborious jurists, in a systematical method that will be hailed by every lawyer as the consummation of his devout wishes. But even a digest—though worthy of the praise given to the Pandects, as "the greatest repository of sound legal principles, applied to the private rights and business of mankind, that has ever appeared in any age or nation"—if enacted into a law and made to operate unbendingly, might not exceed in its usefulness a code or legislative enactment. A rule or principle, established as the resultant of a given series of facts, might undergo essential modification when sought to be applied to a collection of facts apparently the same, yet, upon close examination found to be blended with some minute particulars that materially change the aspect of the case.

To an inquiring mind, intent upon discovering the primitive source of legal principles, there can be no more attractive study than tracing the historical development of the unwritten and private law, from its beginning until its final embodiment in judicial decision. It is a normal development, and keeps pace with the demands of society, and the growth of new institutions. Ideas, at first seemingly paradox and impracticable, struggle awhile for recognition and then disappear, but by virtue of their vital power they strike their roots deep in the soil, in time reach the upper air, spread wide their branches, and bear abundant fruit. The mercantile law owes its marvelous expansion, not to legislative intervention, but to judicial decision emanating from tribunals that appreciated the wants of a commercial age, and knew how to adapt the principles of the common law to the changed manners which were gradually springing up. The doctrines of trusts and fraud, as administered now in the

courts of equity, and as silently interwoven with the texture of the common law, though not the creations solely of judges, are in the nature of judicial responses prompted by the delicate perceptions of right and wrong, the instincts of natural justice, the high moral sense, the public conscience, permeating the great body of the people, and finding expression in the jurisprudence of the state.

In the admiralty decisions we have interesting illustrations of the evolution of the unwritten law. The safety and convenience of commerce, and the speedy decision of controversies where delay would often bring ruin, have rendered courts of admiralty a necessity in all commercial countries. And yet, the jealousy exhibited against those courts by the common law tribunals is well known, insomuch, that when the cognizance of policies of marine insurance was of old claimed by the court of admiralty, the intolerance of the common law courts prohibited the exercise of it, and in the early case of *Crane* v. *Bell*, 38 Henry VIII, a prohibition was granted for that purpose. In 1815, Justice Story, in the case of *De Lovio* v. *Boit*, in an opinion which, as said by Justice Bradley, "has never been answered, and will always stand as a monument of his great erudition"—held that the contract of marine insurance is a maritime contract, within the admiralty jurisdiction of the United States. This doctrine, regarded now as incontestable, had never, for over fifty years, been affirmed outside the first circuit, but had frequently been questioned in the Supreme Court of the United States, and by some of the judges expressly denied. But in 1870, it had become the preponderating opinion among the most enlightened jurists, that the contract was maritime in its nature, and the Supreme Court in *Insurance Company* v. *Dunham*, held it to be within the admiralty jurisdiction, and thus placed upon an immovable foundation a principle that had been sounding on its way for upwards of half a century.

I trust I shall be pardoned for referring in this presence to the familiar case of *The Propeller Genessee Chief*, as it is a noticeable example of judicial evolution in adapting a constitutional principle to the convenience of the commerce and navigation of the country. Under the constitution the judicial power of the United States is made to extend to all cases of admiralty and maritime jurisdiction. The limits of that jurisdiction are not defined; but in the disposal of this branch of the judicial power, Congress, by the act of 1789, conferred upon the District Courts exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, etc., where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts, as well as upon the high seas. In the general maritime law, there is nothing that confines maritime transactions or the maritime law to tide waters or salt water. But notwithstanding the statute refers only to the *navigable* character of the water, adherence to English precedent limited the jurisdiction to navigable waters within the ebb and flow of the tide. In England there were no streams navigable beyon the ebb and flow of the tide, and therefore tide water and navigable water became synonymous terms. On the assumption that the admiralty jurisdiction, *ex vi termini*, was limited by tidal ebb and flow, Congress, proceeding under the authority to regulate commerce, passed the act of 1845, extending the jurisdiction of the District Court to certain cases upon the great lakes and the navigable waters connecting the same. But the Supreme Court, with broad views, and liberal interpretation of the language of the Constitution, announced the doctrine, that jurisdiction depends upon the navigable character of the water; and if the water is navigable, it is to be deemed public; and if public, it is to be regarded as within the legitimate scope of the admiralty jurisdiction. Jurisdiction in admiralty

over the waters of the lakes was, therefore, declared to exist under the act of 1789; and the original purpose of the special legislation in regard to those waters was held to have ceased and become inoperative, with the exception of the clause saving to parties the right of trial by jury. Surveying the imperial commerce of the great lakes, whose waters have been the scene of our naval glory, and upon whose borders have sprung up rich and populous cities, to have held that a navigable stream, because of its tidal ebb and flow, was within the admiralty jurisdiction, while the northern and northwestern lakes—the maritime wonders of the world—should be excluded therefrom, would have been to proclaim the Constitution as only framed for the nation in its infancy, and to ignore its wonderful inherent capacity ot development, and adaptation to our national destiny.

Reference has been made to the difficulties attending the undue interference of the legislative department with the unwritten law as properly belonging to the province of the judiciary. We will not forget, however, that it is not impossible for the judiciary to overstep its own bounds, and misconstrue the language of a statute which is strictly within the limits of the Constitution. In thec ase *United States* v. *Rodgers*, it was decided that the courts of the United States have jurisdiction, under section 5346 of the Revised Statutes, to try a person for an assault with a dangerous weapon, committed on a vessel belonging to a citizen of the United States, when the vessel is in the Detroit river, out of the jurisdiction of any particular state, and within the territorial limits of the Dominion of Canada. Under the language of the statute, the offense must be committed "upon the high seas, or in any arm of the sea, or in any river," etc., but it was held that the term "high seas" is applicable to the open, unenclosed waters of the lakes, between which the Detroit river is a connecting stream. We are not disposed on this occasion to enter into argument after the learned, vigorous and con-

vincing dissenting opinions of Justices Brown and Gray. The lakes in semi-poetic phrase are often called "inland seas;" but the words "high seas" have a well known signification the world over, and if they are no longer to be used according to the common understanding of mankind, and in the sense obviously attached to them by the authors of the statute, recourse to an act of Congress would have been a most appropriate remedy. There are certain well established rules for the interpretation of criminal statutes, which in the present instance seem not to have been too closely followed; and the average man is not willing to be punished for an alleged offense which had never been regarded as an offense at the time it was committed, and was only afterwards declared to be such by judicial decision.

In the evolution of the unwritten law, as exhibited in the decisions of judges, the bar cannot but be a most influential factor. Questions are constantly coming for the first time before courts for determination, upon which there has been long a consensus of opinion among lawyers, which when announced to the courts is accepted as the law, and seems as much an emanation from the bar as a solemn adjudication from the bench. It has been the lot of but few practicing lawyers to leave a permanent record of what they accomplished during their professional career to advance the science of the law. We are permitted to read, with admiration and instruction, the most noted forensic arguments of Erskine and a few American lawyers, that have been preserved to us in enduring form. But the labors and achievements of the bar, while co-operating with the bench in the establishment of legal principles, bring but short-lived distinction, and are conveyed, if ever, to the knowledge of those who come after, only through the uncertain channel of tradition. If the arguments of counsel were as fully reported and as faithfully transmitted, as the opinions of the judges, it would be seen at a glance, what the hardworking, painstaking and drudging lawyer

had done for the jurisprudence of the state; what, for the vast body of that law, "to the study and administration of which he had given his life, by which he had trained his mind, established his fortune and won his fame—the theatre of all his triumphs, the means of all his usefulness." When the learning and vigorous reasoning of a judicial decision extort the unwilling praise even of those who are covered with defeat, too often it is that too little is awarded to the laborious research, clear statement, close argument, and profound knowledge of the advocate who has illumined the cause, and carried conviction to the minds of the judges.

A weak court will be cured, somewhat of its infirmity by a strong bar; but the strongest court is, in its deliberations, entitled to the honest and conscientious assistance of the bar, for not only are the wisest judicial tribunals not infallible, but conscious of their fallibility, experience will teach them that "in the multitude of counselors there is safety." With an able and upright judiciary, zealously working in concert with a bar of elevated aims, to put an end to wrong and injustice among men, the law can never be lightly held as that which is speciously proposed and plausibly maintained, but rather reverenced as the highest reason implanted in nature—as the offspring of supreme inteliigence—the embodiment of the most enlightened conscience—the commanding voice of unerring justice.

[III.]

MEMORIAL ON THE LATE JUDGE HENDERSON ELLIOTT.

By Hon. John A. McMahon.

"Amid the din of arms the law is silent," says an ancient maxim—not so true in modern as in the olden time. In Republican governments we hope for better things. War crushes theories, reverses policies, legislates, and may sometimes abridge liberty. Intelligent people recognize that through war immense benefits may come suddenly, that peace had left knocking at our door unacknowledged and unaccepted. We have had one experience in our day. We are about to have another we hope. Dangerous as war is, we can trust the patriotism and intelligence of our people to escape the seductions of "imperialism."

If the law is silent amid arms the praises of the civilian sound tame when the exploits of heroes are in every mouth. One bold or brilliant action challenges the admiration of the world. When Dewey, Hobson or Schley strike one decisive blow, the nation applauds, and the whole world re-echoes their fame. One hour, or one opportunity like theirs, may outweigh the labor of a lifetime in time of peace.

We do not complain of this. A nation's life is in the charge of her heroes. The decay of her courage would mark the day of her decline. The fullest honors should await the guardians and defenders of the flag; and our whole hearts go out to them in their magnificent struggle. But while we do them complete justice, let us not teach our young men that peace has no victories. Our nation's fate would be disastrous indeed, if ambition found

no reward or honor save in the exploits of war. And this is one of the great hazards of our present condition. We cannot always be at war. He who in the piping times of peace consecrates his life to the betterment of his race; or devotes his energies to the alleviation of pain and suffering; or honestly and faithfully assists in the administration of impartial justice; or in some other way helps or elevates his fellow men deserves and should receive the reward of a faithful servant.

To this organization of lawyers is committed, as one of its obligations, the pleasing duty of preserving and embalming the memory of its members. Gibbon says: "Wise or fortunate is the prince who connects his reputation with the honor or interest of a perpetual order of men." He was speaking of the great order of civilians. And in the same celebrated chapter, at its very opening, he uses the following striking language: "The vain titles of the victories of Justinian are crumbled into dust; but the name of the legislator is inscribed on a fair and everlasting monument."

Let us hope then that the honest lawyer and the upright judge will not be forgotten when the history of our country is written. It is the memory of one of these that I would record to-day—one of the devoted and working members of this body, and at one time its president, Judge Henderson Elliott.

At the mention of this honored name we breathe the fragrant air of purity, and the heart is filled with tender recollections of his genial and welcome presence.

Judge Elliott was born in Perquimans county, state of North Carolina, on the seventeenth day of August, A. D. 1827. He was the son of Jesse and Rachel Elliott—his mother's maiden name being Jordan. His grandparents on both sides were Quakers; his early ancestors on both sides being Irish. His first American ancestor was Colonel William Elliott, who came to this country about the close of the seventeenth century.

In 1830 his parents moved to Ohio, and engaged in farming. In 1839 his father died. Young Elliott, when sixteen years of age, became an apprentice to a cabinet maker; but while he had a mechanical aptitude, he devoted his spare time to reading and study, as active preparation for teaching. By diligence he qualified himself for this work, and after some years of alternate teaching and study, he entered Farmers' College, Hamilton county, Ohio, where he profited by the teachings of Freeman Carey, Bishop Scott and other great educators; enjoyed associations with ex-President Harrison, Murat Halstead and Bishop Walden, and formed a closer friendship with the Honorable Lewis B. Gunckel and Edmond Stafford Young, two of the ablest lawyers of the Dayton bar at a later time.

At the close of his collegiate course he resumed teaching and began the study of law under General Felix Marsh, of Eaton, Ohio. He was admitted by the Supreme Court in 1851. In the spring of 1852 he opened an office in Germantown, Montgomery county, Ohio; from which place he removed to Dayton, Ohio, in 1856. He continued to reside in Dayton until his death on the twenty-fourth day of June, A. D. 1896.

He was elected prosecuting attorney in 1861 on the Union ticket and served one term. In 1871 he was elected Judge of the Court of Common Pleas of Montgomery county by the Democratic party, which position he held continuously by its votes until his death—a period of twenty-five years of faithful, laborious and very satisfactory work.

In 1850 Judge Elliott married Rebecca, daughter of John and Rebecca Snavely; and his wife and two daughters, out of five children, still survive him.

In politics Judge Elliott was a Democrat, but not an active participant in party management after his elevation to the bench. For the period of nearly three years he engaged in editorial pur-

suits, almost exclusively, and was an editor of considerable ability.

In religion he was an active, ardent and conscientious Methodist. He was a member of every electoral conference of his jurisdiction, held since the allowance of lay delegation; and he served as a member of the general conference. He attended the centennial of Methodism at Baltimore at the request of the Bishops of his church as the representative of the laity of the Cincinnati Conference.

As a man, Judge Elliott was a loving and devoted husband and father, an upright, public-spirited citizen, a consistent and professing Christian, pure as the driven snow, in all the relations of life, public or private, and a model to all who may follow in his footsteps.

As a judge, he was learned, patient, laborious and honest. He delighted in the performance of his duties. Nothing pleased him more than the presentation of some intricate problem in equity jurisprudence, the favorite domain of all good lawyers; and it often happened that he worked out justice where the lawyer had overlooked his client's equity. While he preferred the administration of civil justice and had eminent success in that branch, he was a most capable criminal judge. Few delinquents escaped punishment when he presided; and with the assistance of an able prosecutor he brought order out of confusion and crime in the county in which he lived.

It is said that he presided in eight hundred felony trials, with but one reversal. And this reversal was subsequently nullified by legislative enactment.

But he was not satisfied with the mere performance of his judicial duties, laborious as they were. He became connected with this organization at an early day, and took an active part in the promotion of law reform; being for many years the most active member of one of its most important committees, as well

as its chairman. We all know how well he performed his part in the work of this body, and what great pleasure he took in the performance of that work. The statutes give evidence of his labor.

But he has been called to his last account, and we shall meet him no more. He leaves behind an honored name, the record of a well spent life, the respect and love of a host of friends, and the affectionate regard of the members of the profession and of this honorable body. May his memory last forever.

[IV.]

MEMORIAL OF WARNER M. BATEMAN.

By Hon. John A. Shauck.

The occasion which calls upon us to record our estimate of the character of Warner M. Bateman brings to every member of this Association the realization of a great loss. As a member of the Association he was faithful in attendance upon its sessions and active and efficient in promoting the objects of its organization. As a member of one of its important committees, he devoted much time and conspicuous ability to its service. For such efficient service he was unusually endowed by character, by extensive and accurate knowledge of the law, and by much experience in varied departments of professional activity. None excelled him in that appreciation of the lawyer's duty to the public which so broadly distinguishes the profession from the trade, the lawyer from other members of the bar.

It may never be possible to attain entire accuracy in our attempts to find the sources of the traits which compose character. Very much must always be conceded to heredity. But a consideration of Mr. Bateman's distinguishing traits, in connection with his education and his life, will show that his character was not an accidental product. We recognized his inflexible devotion to principle and to duty, his loyalty to family and friends, his faithful discharge of professional and official obligations, his familiarity with the methods of legislation, the breadth of his legal knowledge, and the scrupulous care which distinguished all his preparations.

He was born in Warren county, Ohio, August 5, 1827. He was there reared under the influence of the Quakers and religiously instructed in the ritual of correct living. Having attained the age of eighteen years, and having determined to pursue the profession of law, he resorted to the office of the late Thomas Corwin for professional instruction. It denoted the sound judgment of the preceptor and the tractability of the pupil that he devoted nearly three years to an extended course of reading in philosophy, history and the science of government preparatory to the study of the law. He was admitted to the bar in 1850, and in November of that year he began the practice of his profession in the city of Cincinnati. He was so commended to the public by his character and ability that in 1856 he was nominated for Judge of the Court of Common Pleas. In 1865 he was elected a Senator in the Fifty-seventh General Assembly, where he served as a member of the Committees on the Judiciary, Library, Corporations other than Municipal, Public Works, Public Printing and Railroads. The Journals of the senate show his assiduous attention to his legislative duties. His participation in numerous adverse reports upon bills committed to the committees of which he was a member, shows his appreciation of the then growing evil of excessive legislation.

In 1869 he was appointed District Attorney of the United States for the Southern District of Ohio. His term of service in the office continued for eight years when it was terminated by his resignation. His administration of the office is memorable because of the large number and the importance of the civil and criminal causes which the interests of the government required to be instituted, and for the ability and success with which they were conducted. Shortly before his accession to the office frauds upon the government, chiefly violations of the revenue laws, had been committed in the district in numbers and magnitude that were without precedent. Within twenty months of his accession

to the office he had prosecuted to a conclusion more than two hundred civil and criminal cases, in more than one hundred and eighty of which he was successful, notwithstanding the unusual numbers and ability of counsel by whom the defendants were represented. It may be doubted whether in its efficiency this administration of the office has an equal anywhere in the history of the government.

While in office he instituted in the federal circuit court the appropriation proceeding which is the basis of the very interesting case of Kohl et al. v. The United States, reported in 91 U. S., 367. Congress had passed several acts with appropriations for the erection of a custom house upon lands in Cincinnati to be acquired "by purchase at private sale or by condemnation," but had not conferred jurisdiction of proceedings to appropriate, *eo nomine*, upon any of its courts. The General Assembly of Ohio had passed "an act to authorize the United States to appropriate land in the State of Ohio" for the purpose indicated. The representatives of the government and the owners of the lands desired being unable to agree as to their value, the proceeding to appropriate was instituted. The case appeared to be without precedent in the federal courts. Against the proceedings it was contended that, conceding the power of eminent domain as incident to the authority of the general government, congress had not conferred upon the court the jurisdiction invoked, and that the act of the General Assembly of Ohio could have no further effect than to authorize the proceeding to be instituted in a court of the state. In support of the proceeding it was contended that the power inhered in the general government independently of the action of the state, and that the jurisdiction invoked was within the general terms of the Judiciary Act of 1789. The Circuit Court entertained the jurisdiction, and the judgment was affirmed by the Supreme Court upon the ground stated.

Many other causes of magnitude and interest engaged his attention as District Attorney, and they were all conducted with like ability and nearly all of them with like success. Upon his retirement from office he resumed the general practice of the law, continuing it actively until the day of his death, and maintaining to the end his very high position as a lawyer.

His personal and domestic attachments were very strong. It was a delight to enter his home at Glendale where love of literature and art refined and elevated, and where with his accomplished wife and interesting children he found both rest and strength. To these happy associations may be attributed much of the buoyancy of spirit which he exhibited everywhere, which so especially marked his intercourse with us, and which so effectively resisted the encroachment of years. He did not live to extreme age, but he had well begun to show

"How far the gulf stream of our youth may flow
Into the arctic regions of our lives."

On the fourth of October, 1897, when he was in Washington City upon a professional engagement death came upon him without warning of its approach.

We record this sketch of his life and character with the gratifying conviction that the proprieties of memorial literature impose no obligation either to suppress or to exaggerate the truth.

[V.]

A BRIEF SKETCH OF JOHN J. HALL, ESQ.

PREPARED BY U. L. MARVIN.

On the fourth day of September, 1897, a former president of this Association and a leading member of the bar of Summit county, John J. Hall, Esq., died.

Mr. Hall was born on the twenty-seventh of July, 1828, in the township of Springfield, Summit (then Portage) county, Ohio. He was the son of John Hall, second, a prominent citizen of that township. On the thirteenth of April, 1854, Mr. Hall was married to Miss Cynthia A. Jones, who survives him. He was admitted to the bar of Ohio in 1857, after having pursued his professional studies with the late Edward Oviatt, Esq., for something more than two years. From the time of his admission to the bar until his death he was continuously in the practice of his profession at Akron.

Early in life Mr. Hall made a journey to the southwest extending into Mexico. This journey was made with teams and the wagons known as prairie schooners. No pecuniary benefit came to him from this; but the experience gained, to some extent, at least, affected all his future life. While, perhaps, at that time there was no class of people known as cow-boys, the men with whom he was associated had some of the manners of the modern cow-boy, and to this is probably attributable some of the peculiarities in dress, which were noticeable in Mr. Hall during all the later years of his life—especially his hat. All who knew him know that the only hat in which he was comfortable, was

the broad-brimmed, soft, hat, which attracted attention wherever he went. Indeed, Mr. Hall's personality was well calculated to attract attention. He was, in many respects, a noticeable man. His frame was large; his countenance imposing; his manner somewhat brusque. He was a most companionable man; full of anecdotes; always glad to converse with a friend; and a good listener as well as a good talker. He had many anecdotes of his western experiences, already referred to; among them, one in which he told of being present at a slave auction; this so stirred up his indignation that he could not restrain himself and but for the interference of friends who hurried him away, he would probably have suffered at the hands of those engaged in the sale.

He was by heredity an ardent anti-slavery man, and in many public addresses, as well as in private conversations, he denounced the institution in terms perhaps less elegant but fully as forceful as was ever done by Wendell Phillips or William Lloyd Garrison.

Upon arriving at majority Mr. Hall affiliated and voted with the Free Soil party until the organization of the Republican party, with which he was connected until after the war of the Rebellion. His affiliation with these parties grew out of his earnest convictions on the subject of slavery, and, when after the war, that question was forever settled, he united with and became an earnest worker in the Democratic party, feeling that the great question, which had made of him a Free Soiler and a Republican, having been settled, and settled in the right way, on the questions still dividing the political organizations the Democratic party was more nearly in accord with his convictions.

Whatever faults Mr. Hall had—and in common with all men, he had his faults—hypocrisy was not among them. No man was ever more outspoken upon any question in which he felt an interest, than was John J. Hall. Whoever had reason,

from anything which Mr. Hall said to him, to believe that he was his friend, could always rely on the fact that he was his friend, for he made no effort to conceal his likes or dislikes of men.

For one who was never a parent, his love of children was extraordinary. During all the years of my acquaintance with him there was no time that there were not several small children either living in his immediate neighborhood or on the way between his home and his place of business, who were on the lookout for his smile and his kindly word. He loved to talk with them; he loved to have them in his carriage with him; and always felt a disappointment that none of them were his own.

He had a great love for his profession. He enjoyed the meetings of this Association, and of the American Bar Association, so much that nothing which could be overcome could keep him from the meetings; and, when one year ago, by reason of his failing health, he found that he would be unable to be present at the meeting here, it almost broke his heart. He took great pride in having been elected President of this Association, feeling that to be selected by his brethren of the bar for such an honor was greater than to have received the suffrages of any other class of men.

Mr. Hall was an honest man; he was an eanest man, and an able man, and will long be remembered by those who knew him in his own city as an honorable, true and generous friend, and by those who knew him in this Association and in the American Bar Association, as one whom it was always a pleasure to meet and with whom it was profitable to converse.

[VI.]

The memorial on the late Mr. E. H. Fitch has not been furnished to the Secretary.

[VII.]

MEMORIAL ON THE LATE HON. JULIUS C. POMERENE

By. Hon. C. E. McBride.

There has always been a disposition among men to honor their dead, to linger with a mournful pleasure upon the recollection of their virtues, and to speak of their merits in gentle terms of commendation.

The sentiment is coeval with our race and will continue with it to the end of time. It is peculiar to no clime; it is confined to no class; it is limited by no condition in life. It is common to humanity everywhere. It is innate with every member of our species who is capable of the slightest feeling of respect for his fellow man. It discloses itself in the simple ceremonies that attend the sepulture of the peasant and the solemn pomp that waits on the imposing obsequies of the king. Its memorials are seen alike in the fading wreath that exhales its dying fragrance upon the obscure grave of humble poverty and the sculptured column that lifts its lofty head above the moldering dust of departed grandeur.

It has brought us here to-day to offer with one accord the tribute of affectionate admiration to the memory of one who was endeared to many of us by the tenderest ties of friendship, and to all by the kindliness of his nature and the luster reflected by his genius upon the bench and bar of our state.

Judge J. C. Pomerene has gone to the undiscovered country. Whether his journey thither was but one step across an imperceptible frontier, or whether an unterminable ocean, black, waveless and voiceless, stretches between these earthly coasts and those invisible shores, we do not know. Whether his strong and subtle energies found instant exercise in another forum, whether

his skillful and trained faculties are now contending in a higher court for supremacy, or whether his powers were dissipated and dispersed with his parting breath, we do not know. Whether his passions, ambitions and affections still sway, attract and impel, whether he yet remembers us as we remember him, we do not know. These are the unsolved problems of mortal life and human destiny, which prompted the troubled patriarch of old to ask that momentous question for which the centuries have given no answer—"If a man die, shall he live again?"

Judge Julius C. Pomerene, Presiding Judge of the Fifth Judicial Circuit, was born in Holmes county, Ohio, June 27, 1835. His was an honorable parentage. His mother's beauty and his father's genius blended in sweet harmony to bless his childhood. French brilliancy and German solidity combined in his temperament, while he stood forth the true American. From them he inherited his splendid physique, his capacious intellect, his loyal, loving, generous heart. In that Christian home, his young intellect was developed, and his young heart was taught that divine religion from which he never wavered.

After spending his early life on the farm, he entered Mt. Union College where he secured his education. After leaving college, he entered the law office of Reed & Hoagland and began the study of the law, and later entered the Ohio State and Union Law School of Cleveland, Ohio, from which he graduated with high honors in 1859.

He remained in the active practice of law until 1892 when he was elected one of the judges of the Fifth Judicial Circuit, and at the time of his death was the Presiding Judge.

In his thirty-three years of active practice at the Coshocton bar, he, by his sterling honesty and integrity, won for himself a large and lucrative clientage.

As a lawyer he mastered the science of the law during the period of his professional pupilage. His attainments were not

limited to a few scattering rules and forms picked up from particular decisions used in cases with which he was connected, but were opinions and convictions formed from a searching and comprehensive study of jurisprudence as a grand system of principles resting on immutable foundations of right and justice. For the discovery of these principles, he looked to the exercise of his own reason, and in forensic contests relied mainly on a conscious knowledge of the principles thus discovered.

Adjudicated cases he regarded as but instances illustrating and applying principles. In other words, his own reason, strengthened and equipped by the pupilage aforementioned, discovered and applied general principles, precedents were invoked largely, if not only, to support and confirm the conclusions of his own mind.

As a judge, the right expedient seemed to flash upon his mind instantaneously, even in the most perplexing contingencies, without the least necessity for premeditation. While he gave to each case the most untiring industry and research, it was only for the purpose of confirming his first convictions. He was a model judge. The purity of his life and honesty of purpose raised him to high eminence in the estimation of his associates on the bench.

He was always courteous, forbearing and obliging to the members of the bar. He was the especial friend of the young practitioner, and in his death the younger members of the bar have lost a friend that can never be replaced.

As a man, his words were eloquent, sincere, direct, and they spoke and meant volumes. He always told the truth; he did not believe words were made to conceal thoughts. He had no cant, no chicanery, no hypocrisy; he loved truth for the sake of truth; he loved justice for the sake of justice. He was no pretender; he never dissembled. He was a man of noble impulses, with a high sense of honor, and an unblemished character.

His heart was always true, and he always did his duty as he saw it. He did not believe in half way measures. With him, a thing was either right or wrong. He tested every proposition in the crucible of experience, of truth and of justice.

Fidelity to friends was a distinguishing trait of his character. To know him was to love and esteem him. He held his friends to him with hooks of steel welded in the furnace of love and affection.

Judge Pomerene was married April 8, 1852, to Miss Irene Perkey, who survives him. Of this marriage, two sons and one daughter were born. The sons selected the profession of the father, and took up the mantle he laid aside to put on the judicial robe.

In his home life at his fireside, he was seen at his best. Loyalty to his family was his most marked characteristic. It was his delight to be surrounded by his wife and children. They were his joy, his pride, his life.

But he has gone. Stricken down at the end of his years' work, surrounded by those he loved, death came so peacefully that the watchers could not tell just when his spirit took its flight.

Ended are his conflicts, his triumphs and defeats. The strong aggressive intellect is at rest. Out upon the shoreless ocean his bark has drifted; but it has not carried away all of the life that has ended. In the case of our departed friend, the last entry has been placed on the journal, the final record is made up. The Court crier has adjourned court without day.

"The looms of time are never idle, and the busy fingers of the fates are ever weaving, as in a tapestry, the many threads and colors that make up our several lives, and when these are exposed to critics and to admirers there shall be found few of brighter colors or of nobler pattern than this life of Judge Julius C. Pomerene."

[VIII.]

MEMORIAL ON THE LATE FRANK W. RICKENBAUGH, ESQ.

ADOPTED BY THE LUCAS COUNTY BAR.

Frank W. Rickenbaugh was born near Tiffin, Seneca county, Ohio, February 1, 1862. Graduated at Heidelburg University, Tiffin, Ohio, in 1883; admitted to the practice of law February 2, 1896; died at Trinidad, Colorado, June 13, 1898.

Mr. Rickenbaugh resided in Toledo for a number of years. Some three years ago failing health induced him to seek a change of climate, in the hope that he might thereby prolong his life, and for a time it seemed as if the hopes of Mr. Rickenbaugh and his host of friends would be realized. The improvement, however, proved to be only temporary and on the thirteenth day of June death abruptly terminated a life that had been so full of hope and promises for the future.

Mr. Rickenbaugh was a man of more than ordinary legal attainments and ability, and in addition to that he had the genius of industry. His purity of character, his strict integrity, his loyalty to his friends won the respect of all who knew him. In business and in his chosen profession of the law his word was as good as his bond. Purity and honesty marked his career in life.

We mourn his untimely taking off, and we extend to his young and loving wife the heartfelt sympathies of those who knew him only to love and to admire him, and we ask that this brief memorial be placed upon the journal of this court, and that the Clerk of this Court be directed to send to the widow of our late friend and brother a copy of the foregoing tribute of respect.

[IX.]

MEMORIAL

PROCEEDINGS OF MEETING OF THE CUYAHOGA COUNTY BAR, JULY 12, 1898, HELD IN HONOR OF E. A. ANGELL, ESQ., DECEASED.

Pursuant to a call issued by the President and Secretary of the Cuyahoga County Bar Association, a meeting of the Cleveland bar was held at the United States Circuit Court Room, Cleveland, Ohio, at 10 o'clock A. M., July 12, 1898, to take action in the matter of the death of Elgin Adelbert Angell, Esq., lost on the steamship La Bourgogne, July 4, 1898.

Mr. John M. Henderson, President of the Bar Association in the chair.

The Chairman appointed J. H. Dempsey, Esq., Secretary of the meeting.

On motion the Chairman appointed the following Committee on Resolutions: William E. Cushing, Esq., Hon. R. C. Parsons, Hon. Carlos M. Stone and H. A. Garfield, Esq.

Appropriate remarks were made by the following gentlemen: Mr. J. H. Dempsey, Mr. W. S. Kerruish, Mr. Frank R. Herrick, Mr. L. A. Russell, Hon. T. K. Dissette, Mr. S. H. Tolles, Mr. O. C. Pinney, Mr. Frederick A. Henry, Mr. Thomas L. Johnson.

The Committee on Resolutions, through its Chairman, Mr. William E. Cushing, thereupon presented the following report:

Elgin Adelbert Angell has been suddenly taken from us in the prime of his life and the maturity of his powers. In the twenty years of his residence in Cleveland and of his practice at this bar, he won a well deserved reputation for professional learning and ability, for general culture, for wisdom in counsel, for skill and

success in the conduct of long, involved and difficult litigation, for honor, cleanness and fairness, for scorn of whatever is mean or base, for public spirit and a readiness to do his part in the improvement of our laws and the betterment of our political conditions. It is a distinct loss for our bar and for our community to be deprived of the elevating influence of the continuing presence and work of such a man.

To his family we offer our sincerest sympathy in their loss, so grievous and so sudden.

The president and secretary of this meeting are desired to transmit to Mrs. Angell a copy of this memorial, and to request the Common Pleas Court of this county and the United States Circuit Court for this district to cause a copy of it to be spread upon their records.

William E. Cushing,
R. C. Parsons,
Carlos M. Stone,
H. A. Garfield,
Committee.

On motion the resolutions were adopted.

On motion the meeting adjourned.

[X.]

REMARKS OF HON. ELI S. HAMMOND,

Delivered Before the Ohio State Bar Association, at Put-in-Bay, July 14, 1898.

I had come to think that being very much a citizen of Ohio, *pro hac*, I was quite equal to any occasion, but just now I feel that it would have been better if the boat had left me, as it came near doing, as then I would have been spared the affliction that is now upon me, of being violently dragged off the vessel and set on my legs to make a speech. It came within my observation as a boy about men, particularly wicked men, that what kept most of them out of the church was a fear that the preacher would call upon them to lead in prayer. Something of the same feeling keeps me away from bar meetings, not being, like your President, Judge Harmon, or Mr. Chauncey Depew, ever willing, ready and able to make a speech whenever one is needed or demanded.

Surely I never had any intention of speaking to you on the subject of "Court Room Oratory," which, Mr. President, you have so kindly selected for me. When Mr. Marshall notified me that it was expected that I should say something I declined, necessarily declined making anything like a prepared address. I did say, however, that if occasion offered, I would make a few ex tempore remarks, and I presume you have some right to demand that much of me at this moment—hurried as it is by your previous arrangements.

I shall not say a word on any subject connected with the law. I have enough of that. When one has tried cases for many weeks and listened to all sorts of lawyers upon all sorts

of law, one likes to put the law behind and find a fresher field than one of such dry grass.

I beg the privilege of saying something to you about "Uncle Sam's New Hat." You have all seen the cartoon representing Uncle Sam dressed in the conventional fashion, with a mingled expression of disgust and delight, trying upon his head a new Imperial Crown. Carelessly he has laid upon a chair his old time hat with the starry band, and of the shape with which our former President Benjamin Harrison has become familiar. It is a very suggestive cartoon, and as instructive as suggestive.

Pertinent to the events that are now going on, may I ask these members of the bar if it be a fact that Uncle Sam is trying on such a hat as that? If it implies that our form of government is to be changed; that we are to become an empire instead of a republic; that William McKinley, or Grover Cleveland, or some other man like these is to become our emperor or king.

There is not a man, woman or child in our country who is in favor of making such exchange of head-dress as the cartoon implies. But, does the course of events now transpiring necessarily force us to any such change in government? I think almost every intelligent man who looks at the matter considerately will say that that can not be so. We are not engaged in any conquest of inferior races; we are not engaged in any enlargement of an empire; and I think it is unjust to those who are somewhat responsible for the new conditions and the new arrangement of affairs to imply any such outcome of events as that.

One of the greatest pleasures of my life, when about the first of last March, I happened to be in Cambridge, was to sit within a few feet of Secretary Olney as he delivered his famous address upon the International Isolation of the United States. He called attention to the fact that we had grown since the days of Washington; he said we were not a nation in the swaddling

clothes that had been provided for us at the time of George Washington's Farewell Address; but that we had grown to a great nation; one that could not afford to stand aside and pen itself within one continent, but must prepare for a newer, higher, and more extensive exercise of that power which we had accumulated in all the years since George Washington's time. He had no idea of the Philippines, did not mention the pending relations of Cuba at all, and his address was not projected upon such lines as those. It was wholly upon the idea that the United States must, in all the affairs of the world, hereafter assert its power and influence in some other way than by giving its moral support to those great affairs with which other nations had to deal. He called attention to the fact that Russia, Germany, and France, and England were gathering together on the main land of the Empire of China; that the Christian world was about to turn the searchlight of our civilization into that benighted empire; that we were to teach those people how to use railroads, and telegraphs and wheeled vehicles, and all the arts of progress, and how to enjoy the fruits and delights that come from the use of the modern appliances of civilization; and, along with it, would come the opportunity which they were seizing to carry to that people the fruits of their manufacturing and other industries. And he asked the question: Why should not the United States so arrange its economic legislation and foreign policy that our people should have an opportunity to share in this work and its profits? And he suggested that, by an alliance, not necessarily an alliance, but by co-operation with any nation that was a recognized power in the world, the United States might, by a change to that kind of diplomacy, and in its action, extend something more than a moral influence in the advancement and progress of the world in that direction. Little did the Secretary think how soon would come the time when his question would become the burning question of our practical politics.

What are we to do with the Philippines, and what are we to do with Cuba, Porto Rico, and the Canaries, and all the other possessions of Spain, if it becomes necessary that we should take them all? We have that condition to deal with, and, I take it, that the members of the bar, as they always do in governmental matters, will exercise a potential influence in the settlement of the problems that are now crowding upon us; and I ask you seriously: How are we to throw our influence in the settlement of these problems? Are we to give the Spanish possessions back? Or, are we to take them and undertake to govern them? For myself, I must say, that a full judgment has not been made upon that question. But I take it that any man who thinks about it must see that there is about to be established a condition of things requiring that every man should keep an open mind on that subject until the war is ended and the terms of peace are presented for our consideration. If we are to accept Mr. Olney's policy of putting aside our isolation, to start out upon the exercise of our due and proper influence in the affairs of the world, we certainly do need to prepare ourselves for such a career as that; and the first preparation that we need, as this war has taught us, is that we must have, scattered through the seas of the earth, places that we control for coaling and naval stations, that we may not be in the condition that the Spanish navy now is,—unable to obtain coal when we need to coal our ships; or, like Dewey was when ordered out of Hong Kong, put to the necessity of conquering a harbor in which to moor and supply his ships. And if there be nothing else than that military necessity, it does seem to me that, before we give up the opportunity we now have of establishing a place for naval stations in the Pacific that shall guard a highway to the markets of China—before we agree to give up what we have captured of the islands of the Pacific and return them, we should

carefully determine as to what better we can do than to keep them. That we should take them and keep them, I do not say; but certainly, if we undertake to embark upon a new line of international action, we not only ought to do that, but we ought to have an abundant navy—a first-class battleship for every State, a first-class cruiser for every capital city, a second-class cruiser for every second city in every State, and if we need more monitors and torpedo boats, just as many as we need. (Applause.)

Now, I know a great many objections can be raised intelligently to such a policy; and that there are a great many men, some of whom, Cassandra-like, predict evils of all kinds that will come to us if we start into the "sphere of influence" business; and surely we ought to be careful before we do start. But possibly these Cassandra-like prophesies of insuperable difficulties and great evils may not come true. They never have heretofore when made about the Louisiana purchase, the annexation of Texas, the acquisition of California, New Mexico, and the rest, or the purchase of Alaska. I do not know; none of us can say, but the evils may not follow. But this I believe, that whatever we determine to do, we shall always accomplish, and shall be always ready to overcome the difficulties.

There was another cartoon which suggested another idea to me, and it was a very amusing one. Perhaps you remember it. Uncle Sam, with woe-begone face, held in his arms, after Dewey's victory at Manila, what seemed to be a colored newly born babe; and the question underwritten is: "What shall we do with it?" I noticed, however, that the artist had very carefully drawn the new comer so that it should not be a "nigger baby." He had made it look like a little savage,—black; but still it did not have the characteristic physical appearance of the colored baby, with which some of us are quite familiar. (Laughter.) But, it seemed to me that he had a design in that; that he was carefully guarding against treading upon the corns

or prejudices of some people in this country, who think that we have about as much of that kind of population as we ought to have. But the idea occurred to me that we might put the little savage into an incubator; if it turned out to be a first-class citizen, we might keep it, and if not, we might do with it as we have done with the Indians—put it on a reservation.

You may talk about it and think about it as much as you please, and express opposition to it as much as you please, but when you come down to the facts of history, inferior races, who are incapable of carrying on their part in civilization, must go down before those who are capable of carrying on the world's great work. It does seem to me that if we can not make of the half-breeds in Cuba and the Philippines good American citizens, we can supplant them by sending our own people there to occupy the places that they have occupied. We so occupied this continent, and why not the few islands of the sea that we need in our business?

These are desultory thoughts; but nevertheless, I think they suggest what is in every man's mind. We have to work out this problem; and we know that we enter upon its preliminary stages with the wise guidance of a President, who has, in his conduct of affairs since this trouble commenced, commended himself universally to the people of this country everywhere, and to intelligent foreign public opinion. (Applause.) He has not been talking through his hat, or through the newspapers; but quietly he has been performing the great duties devolved upon him, in a way that has disarmed all adverse criticism, except in the "yellow journals" of New York, the only persons who have had anything to say against him and his cabinet. This is true of all parties, and especially in the section of the country where I live, and where he has had heretofore, politically, scarcely any following at all. (Great applause.)

And that brings me to say mainly what I wish to say in this presence: That if this war with Spain has done no other good, or does not accomplish any other purpose, it has united the sometime hostile sections of this country, in substance and in fact, and has buried forever out of sight "the bloody shirt." (Applause.) The Spaniards have dug the grave that hides that symbol of our unhappy strife from us through all future time.

Did you ever think of it? I know there is in this section a common opinion,—and it is not altogether an ill-founded opinion, and I am ready to say, in some respects, it may be considered a right opinion,—that whatever has remained of a want of true and perfect reconciliation between the North and South largely may be charged to the obstinacy of the South. But, it is not all so. We admit how generous in good feeling the Northern people have been to the Southern people, and we recognize that fact even in politics sometimes, as well as in other ways, when you come to get at the real truth about it and get away from what is merely temporary animosity. But let me ask you if there has ever been a time, since Lee surrendered at Appomattox, when any Southern man could be President of the United States, with the consent of the Northern people? There has never been with you such a trust as that. There has never been a time when you would be willing to elevate to that high office any man who was born or lived south of the Ohio River. Now, why? You answer that question. It is a fact. You put him in the Cabinet; you put him on the Supreme Bench; you give him the place that I occupy; put him anywhere else, but you have never been willing to trust him with the full power of the President of the United States. But I believe now, when the war with Spain is ended, you will consent to it, and you will be willing to see a worthy Southern man occupy the place. That condition of things has dwarfed, and sectionalized, and narrowed the statesmanship of the men in the South, no matter to what party they be-

long, or what politics they profess. A Southern statesman knew hitherto that the Senate of the United States was the highest place in politics that he could reach; and every man knew that, in order to be a Senator of the United States, he must cultivate and conform to the local sentiment of the State in which he lived. He had no national public opinion to which he could appeal. He did not care for national sentiment because it was useless for him to appeal to a larger national constituency, since they would not be his constituents; and that fact itself has forced the public men of the South to localize very largely their statesmanship and politics, and to become, in a large sense, sectional and narrow in their views. It is because they were not allowed to step into the national arena to acquire and exercise the national power; and when you have removed that obstacle, as it has been since this war commenced, there will be necessarily an expansion of the Southern man's constituency and his statesmanship as well. By an Act of Congress which permits a man, no matter if he has been a Confederate soldier, to be an admiral or commander in the navy or to command our armies, we have at least closed the bloody chasm, and are really a united people. That act was passed since the Spanish war commenced. Other things being equal you would trust Fitzhugh Lee or old Joe Wheeler with the Presidency, but not until this day would you have done it.

Now, let me tell you what effect it has had. Admiral Semmes of the Alabama has today in this war three grandsons, the sons of one mother who lives in my town; one is at Manilla, one on the Netwark, and the other is prepared to go wherever the government shall send him. There is scarcely a regiment that is not made up of the sons and grandsons of those who fought in the Confederate Army. And I had a very happy illustration of the effect of that when I was holding our court in one of the towns in my district, at the very time that the victory took place at Manilla. You Yankees did not think to have a Dewey

Day until sixty days after; we had our Dewey Day in that town in four or five days after the event. I saw there a demonstration which could not have been more earnest if Robert E. Lee had come from his grave and had been himself celebrated on that occasion; it came when the telegraphic news came of the victory; every man, woman and child assembled on the public square to engage in a patriotic demonstration, and the flag of the Union was more in evidence than we had seen it since the Civil War.

I was invited out to a dinner; a lady who was expected to be there did not come. I said: "Where is Miss M?" "She is making a flag for the company that is going out to-morrow; she is actually making the stars and stripes for the company of her nephew." I said, "Well, you present her with my compliments, and say that I never expected to see the day when she would be wrapping her nephew in the blue uniform of theYankee and sending him out to fight under a Yankee flag made by her own fingers." She took me to task for saying that. She says: "It is our flag. George Washington made it." (Applause.)

Hereafter, when this war in ended, any man, North or South, can pass the monuments that have been raised throughout the land without any lingering sentiment of regret. Charles Sumner, one of the wisest of statesmen, said, immediately after the war, that the monuments of a civil war should be made of wood; and so they ought. But you here have erected your monuments to your heroes, and we have erected ours to our heroes. Hereafter, the Confederate soldier can pass by your monuments without the least tinge of revenge; and you can go upon the public squares of our towns and pass the Confederate monuments without any feeling of resentment that they should be allowed to exist to glorify a conquered rebellion, as you might think. Notwithstanding the animosities of that time, the country has been blessed with perfect peace and reconciliation. Your sons of veterans and our daughters of the confederacy have been seek-

ing, as I must say I sometimes feel, to perpetuate by inheritance the animosities of civil war. It is of doubtful utility, and fairly a subject of criticism. It may be well enough for the old soldiers to organize themselves on either side to fight over again in song and speech the battles that they fought so well, but I have never seen any need of keeping up those organizations among their children who are at peace. The Sons of Veterans and Daughters of the Confederacy can now at last kiss and make up, disband and forget that there ever was a civil war. Grant's grandson is riding on the staff with Lee. The most unreconstructed man we have living in the South since old Jubal Early died, is commanding a regiment made up of Pennsylvania, Minnesota and Ohio troops. Now isn't that an agreeable fact? My brother, Judge Taft, whom I expected to meet here, when I was sitting on the Court of Appeals with him, used to tell, with great delight, that he had a Forrest Raider on one side, and a Morgan Raider on the other side of him. If anybody had told me in May, 1865, when we surrendered to General Wilson, that I would be up here thirteen years afterwards administering federal justice to the Yankees, I should have thought he ought to have gone to the lunatic asylum. The Yankees are not now the whole thing in the United States. They have no monopoly in the starry flag. It belongs to the Southern people as it does to them. North and South have shed their common blood beneath its victorious folds; and the Southern people, men, women and children, recognize it, not technically, but admiringly, as our common flag; and when the women of the south begin to recognize that flag, the war is over in fact.

Judge Lurton told me a very good story. Soon after he came upon the bench, one of your Ohio lawyers met him at a dinner or reception that had been given to him; said to him as he came up pleasantly: "Judge, I understand you belonged to Morgan's command?" "Yes." "Well, were you with Morgan

when he came up through Glendale and Cincinnati and went on up through the country?" "Oh, yes, I was, and was captured and put in the penitentiary at Columbus, and managed to get out and get away." He said: "And now you are holding Federal Court in Cincinnati? Well, the war is over." And he thought that was a good illustration of the fact that the war was over. I am perhaps the first Confederate soldier who was placed upon the Federal bench. I am not quite sure about that, but I think so. I was put there by an Ohio President, who had been a Federal soldier, and was willing to trust Confederate soldiers as far back as twenty years ago. Soon after I had been appointed by President Hayes, I went to Texas to visit my father, brother and sister; and I had quite an amusing incident. On returning, my brother went with me to take the train. He said: "I want to introduce you to a friend of mine. He is going on the same train." We passed the compliments of the day, and he said he would see me again after supper. He hunted me up. Thus he spoke: "You are a brother of my friend, Captain Hammond, who was in the Fourth Tennessee Regiment; and I understand you are now a Federal Judge, and were in the Confederate Army." I said I was. "Now," he says, "not to multiply questions, 'How, how in the hell did you get to be a Federal Judge?" (Laughter.)

When I told Chief Justice Coleridge that I presided every day in a court where I had been indicted for treason, he said it could not happen in any other country than America.

I do not know that I have said all that anybody could say upon this subject. I have said all that I probably ought to say, and I still have not solved for you, or have not suggested any solution of the question whether we shall keep the Philippines, or give them back to Spain, or whether Uncle Sam shall buy the new hat that seems so temptingly offered to him. But I will tell you of another thought which occurred to me when reading a news-

paper the other day. The London Standard, in making comment upon some of the recent events and accomplishments of our army and navy, said: "These events show of what stuff the whelps of the lion are made." It seemed to me that the lion might some day be growing old, and might yearn for the whelps to take care of her in her old age. And why should we not? I believe we will. If we need a friend, if we need an ally, if we need to make any combination for our mutual protection, we certainly will find that friend in the mother country. (Applause.) Do you see any objection to the cross of St. George and the starry flag of our own country floating together, if such an alliance as that ever becomes necessary? At all events, Germany, or France, or any other nation that shall set itself up against us, will not find us without friends when we need them; and that was the suggestion of thought in Secretary Olney's address, which I suppose you all have seen, as it has been published in the Forum.

And now, Mr. President and gentlemen, I have said all that my promise requires me to say. I have not, of course, put these thoughts in any shape of a prepared address, and could not. When I received the kind invitation to appear on this occasion, it was impossible to prepare an address. I could only put down a thought which might occur to me during the arduous work of busy days; and I have come here in a crude and desultory way to gratify a feeling that I ought not to refuse or decline to make some remarks before this Association, because I have been so kindly treated in all these twenty years that I have been coming to Ohio to perform the official duties that I am now performing before the lawyers of Ohio. I feel quite as if I belonged to Ohio; as if I were almost a member of its bar. I know if the lawyers regard me as I do them, they will kindly look upon me as one of their adopted sons.

(Great applause.)

MORTUARY LIST.

MORTUARY LIST.

Name.	Became member.	Death.	Memorial.	Residence.
Adams, Hon. Perry M	1889	August 22, 1891	Rep. 13, 34, 155	Tiffin.
Angell, E. A.	1890	July 4, 1898		Cleveland.
Ashburn, Hon. T. Q.	Ex-officio	January 17, 1890	Rep. 11, 44	Batavia.
Atherton, Hon. Gibson	Ex-officio	November 10, 1887	Rep. 8, 187	Newark.
Barber, Col. Llewellyn	1880	July 25, 1885	Rep. 9, 285	Columbus.
Baker, William	Original	November 17, 1894	Rep. 16, 123	Toledo.
Baldwin, Hon. Chas. C.	1889	February 2, 1895	Rep. 16, 119	Cleveland.
Bartley, Hon. Thos. W.	Ex-officio	June 20, 1885		Washington, D. C.
Bateman, Hon. Warner M.	1891	October 4, 1897	Rep. 19	Cincinnati.
Bates, Hon. James L.	1880	May 2, 1895	Rep. 11, 276	Columbus.
Beavis, Hon. Benj R.	1880	March 4, 1884		Cleveland.
Bishop, Hon. J. P.	Original	October 28, 1881		Cleveland.
Brinkerhoff, Hon. Jacob	Ex-officio	July 19, 1880		Mansfield.
Buckland, Hon. Ralph P.	Original	May 27, 1892	Rep. 13, 33, 205	Fremont.
Campbell, Hon. J. V.	1882	July 2, 1888	Rep. 9, 49, and 11, 288	Eaton.
Carhart, Henry Clay	1880	April 17, 1893	Rep. 14, 29	Galion.
Carper, H. M.	1883			Delaware.
Chamberlain, H. A.	1881	February 18, 1884		Toledo
Clark, Hon. Milton L.	1880	June 11, 1897	Rep. 18, 354.	Chillicothe.
Cochran, Hon. Robert Henry	1895	February 22, 1896	Rep. 17, 249	Toledo.
Collins, Frances	1880	August 31, 1882	Rep. 9, 137	Columbus.
Colver, Hon. Elisha M	Original	September 24, 1895		Sandusky.
Conklin, Hon. J. S.	1882	October 1, 1887		Sidney.
Cook, Asher	1889	January 1, 1892	Rep. 13, 34	Perrysburg.
Cowan, Hon. Allen T.	1883	June 21, 1891	Rep. 13, 33	Batavia.
Culbertson, W. C.	1889	December 22, 1894	Rep. 16, 147	Mt. Vernon.
Critchfield, L. J.	Original	February, 19, 1896	Rep. 17, 233	Columbus.
Cunningham, Hon. Theo. E.	1883	April 14, 1889	Rep. 10, 43–46	Lima.
Daugherty, Hon. M. A.	1880	January 15, 1887	Rep. 8, 190	Columbus.
Day, Hon. Luther.	Original	March 7, 1885		Ravenna.

MORTUARY LIST—Continued.

Name.	Became member.	Death.	Memorial.	Residence.
DeWitt, Hon. James L	1890	October 11, 1890	Rep. 12, 49, 190	Sandusky.
Dilatush, Hon. W. S	1888	October 2, 1895	Rep. 17, 231	Lebanon.
Dowdall, Edward J	1881	April 5, 1890		Columbus.
Dunn, Hon. A. K	Original	April 29, 1890	Rep. 11, 47	Mt. Gilead.
Edwards, J. M	Original	December 8, 1886		Youngstown.
Elliott, Hon. Henderson	Original	June 24 1896	Rep. 17, 219	Dayton.
Fitch, E. H	Original	September 9, 1897	Rep. 19	Jefferson.
Foster, Hon. Edward	1880	April 17, 1883		Bryan.
Geddes, Hon. Geo. W	1892	November 9, 1892	Rep. 14, 131	Mansfield.
Gerard, C. W	1891	September 24, 1894	Rep. 16	Cincinnati.
Gilmore, Hon. Wm. J	Ex-officio	August 9, 1896	Rep. 18, 250	Columbus.
Goode, Frank C	Original	November 29, 1887		Springfield.
Goode, Hon. James S	1880	April 19, 1891	Rep. 12, 33–36, 37, 41	Springfield.
Goodhue, Hon. N. W	1880	September 12, 1883		Akron.
Green, Hon. Edwin P	Original	December 23, 1894	Rep. 16, 127	Akron.
Guthrie, Hon. E. A	1892	July 12, 1893		Athens.
Hall, John J	Original	September 4, 1897	Rep. 19	Akron.
Hamilton, W. B	1880	September 23, 1887		Richwood.
Hanna, Hon. J. E	1883	Aug, 30, 1894	Rep. 16	McConnelsville.
Hare, Hon. D D	1894		Rep. 18, 261	Upper Sandusky.
Hurd, Hon. Frank H	1896	July 10, 1896	Rep. 17, 225	Toledo.
Hutchins, W. A	1880	January 22, 1895		Portsmouth.
Horton, J. D	Original	September 14, 1882		Ravenna.
Houk, Hon. G. W	Original	February 9, 1884	Rep. 15, 131	Dayton.
Johnson, Hon. W. W	Ex-officio	March 2, 1882		Ironton.
Keith, Myron R	Original	August 14, 1893	Rep. 15, 30, 32	Cleveland.
Kent, Hon. Chas	Original	July 9, 1888	Rep. 9, 45	Toledo.
Kennon, Hon. William	Ex officio	November 2, 1881		St. Clairsville.
King, Hon. Rufus	1880	March 25, 1891	Rep. 12, 38–43, 47, 181	Cincinnati.
Kramar, A	1881	August 10, 1885		Oak Harbor.

MORTUARY LIST—Continued.

Name.	Became member.	Death.	Memorial.	Residence.
Lee, Hon. John C	Original	March 23, 1891	Rep. 12, 29, 44, 46, 182	Toledo.
Lemmon, Hon. John M	1892	August 17, 1895	Rep. 17, 247	Clyde.
Leonard, J. L	1890	September 3, 1895	Rep. 17, 241	Bucyrus.
Longworth, Hon. Nicholas	1882	January 17, 1890	Rep. 11, 43	Cincinnati.
Mason, Hon. James	1880	January 5, 1885	Rep. 9, 43	Cleveland.
Matthews, Hon. Stanley	Original	March 22, 1889	Rep. 10, 40, 43	Washington, D. C.
McIlvaine, Hon. Geo. W	Ex-officio	December 22, 1887		New Philadelphia.
Moore, Col. Oscar F	1880	June 24, 1885		Portsmouth.
Noble, Henry C	1880	December 12, 1890	Rep. 12, 28, 50, 192	Columbus.
Odell, Hon. Morgan N	1881	October 29, 1888	Rep. 10, 46–50	Toledo.
Okey, Hon. John W	Ex-officio	July 25, 1885		Columbus.
Olds, Hon. Chauncy N	1880	February 11, 1890	Rep. 11, 282	Columbus.
Owesney, W. A	1880	April 18, 1886		Steubenville.
Perry, Hon. Aaron Fite	1882	March 11, 1893	Rep. 14, 158	Cincinnati.
Pillars, Hon. Isaiah	1880	September 13, 1895		Lima.
Pomerene, Hon. Julius C	1894	December 23, 1897	Rep. 19	Coshocton.
Price, J. F	1881	August 8, 1887		Toledo.
Richards, Channing	1894	September 12, 1896	Rep. 18, 241	Cincinnati.
Ranney, Hon. Rufus P	Original	December 6, 1891	Rep. 13, 187	Cleveland.
Rickenbaugh, Krank W	1887	June 13, 1898	Rep. 19	Toledo.
Sadler, Hon. E. B	1881	March 26, 1888		Sandusky.
Scott, A. W	1891	March 9, 1896	Rep. 17, 237	Toledo.
Scribner, Hon. Chas. H	1884		Rep. 18, 245	Toledo.
Sherman, Henry S	1890	February 24, 1893	Rep. 15, 31, 121	Cleveland.
Sherwood, Hon. William E	1890	September 23, 1892	Rep. 14, 165	Cleveland.
Scroggs, Jacob	1881	March 23, 1897	Rep. 18, 235	Bucyrus.
Slattery, John A	1883	December 23, 1895		Cincinnati.
Spence, George	1881	February 6, 1895	Rep. 16, 135	Springfield.
Spalding, Hon. Rufus P	Ex-officio	August 29, 1886	Rep. 9, 143	Cleveland.
Swan, Hon. Joseph R	Ex-officio	December 18, 1885	Rep. 5, 50	Columbus.

MORTUARY LIST—Concluded.

Name.	Became member.	Death.	Memorial.	Residence.
Swayne, Hon. Noah H	Ex-officio	June 8, 1884	Rep. 5, 42	New York.
Thomas, A. Z	1891	February 11, 1896	Rep. 17, 243	Ottawa.
Thomas, D. E	1891	May 6, 1896	Rep. 17, 245	Toledo.
Thomas, W. B	Original	September 12, 1886		Ravenna.
Thompson, George K	1882	January 27, 1890	Rep. 11, 45	Cincinnati.
Tilden, Hon. M. H	1882	February 23, 1888		Cincinnati.
Thompson, Samuel J	1882	October 14, 1895		Cincinnati.
Thurman, Hon. Allen G	Ex-officio	December 12, 1895	Rep. 17, 145, 211	Columbus.
Train, A. W	1880	May 13, 1891	Rep. 12, 201	Zanesville.
Tyler, Hon. Joel W	Original	September 14, 1894		Cleveland.
Van Fleet, H. T	1880	November 28, 1891	Rep. 13, 32	Marion.
Ward, Gen. Durbin	Original	May 22, 1886	Rep. 9, 139	Lebanon.
Walters, Octavius	1881	July 8, 1885		Delta.
Waite, Hon. Morrison R	Ex-officio	March 23, 1888	Rep. 9, 173	Washington, D. C.
Waite, Edward Tinker	1880	December 23, 1889	Rep. 11, 289	Toledo.
Welch, Hon. John	Ex-officio	August 6, 1891	Rep. 13, 31, 33, 209	Athens
White, Hon. William	Original	March 12, 1883	Rep. 6, 219	Springfield.
White, Hon. Charles R	Original	July 29, 1890	Rep. 12, 32, 36	Springfield.
Wilder, Hon. Horace	Ex-officio	December 26, 1889	Rep. 11, 290	Red Wing, Minn.
Wildes, Gen. Thomas F	1880	March 28, 1883		Akron.
Willey, George	Original	December 29, 1884		Cleveland.
Woodbury, Hon. Hamilton	Original	June 19, 1895	Rep. 16, 141	Jefferson.
Wright, James E	1880	November 17, 1890	Rep. 12, 50, 184	Worthington.
Young, E. S	1882	February 14, 1888	Rep. 10, 82	Dayton.